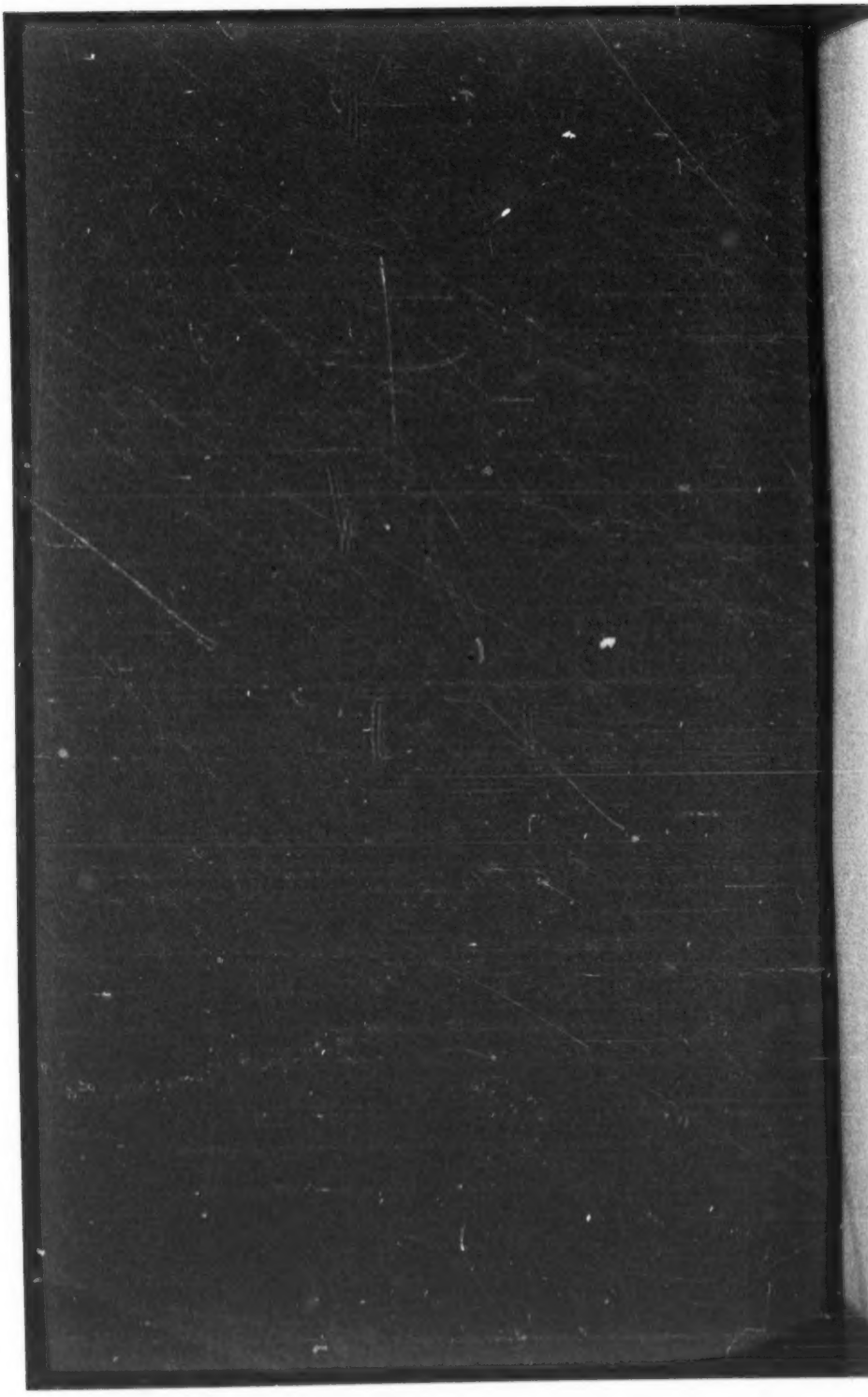

Wilmington, Delaware,
July 3rd, 1923, at 8:30 o'clock a. m.
Standard Time.

Before:

HON. HUGH M. MORRIS, *U. S. District Judge.*

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

FRANCIS P. GARVAN, resumed the stand.

DIRECT EXAMINATION (Continued).

By MR. KRESEL:

MR. KRESEL: Your Honor please, yesterday Colonel Anderson made the suggestion that on Defendant's Exhibit 83, which your Honor will recall was a statement of what licenses have been issued, there be added a column showing the form of license that was used in each case. I have had that done, Colonel Anderson; I have had a new column put in showing the form of license that was used in each case. We should like to substitute another copy for the Defendant's Exhibit 83 now in the case, this other copy having the necessary detail. Therefore I would like to have this copy I have here now marked in place of the other.

THE COURT: Let the substitution be made, without objection.

The same was so marked, Defendant's Exhibit No. 83. (*See Exhibits, Vol. IV, page 2583.*)

MR. KRESEL: Your Honor will recall that yesterday a question arose in connection with Mr. Garvan's testimony that he was not a stockholder of the Chemical Foundation. I have produced

here the original voting trust certificate books and the voting trust certificate books for the preferred and common stock, also the transfer sheets, and I have submitted those to Colonel Anderson. I state that these records show that neither Mr. Garvan, nor Mr. Corbett nor Mr. McKay at any time held any of the stock or any voting trust certificate representing any stock in this Chemical Foundation. I understand Colonel Anderson is satisfied as to that.

MR. ANDERSON: I have examined these books this morning and do not find that Mr. Garvan or Mr. Corbett or Colonel McKay were ever registered owners of any of the common or preferred stock or voting trust certificates of the Chemical Foundation, as stated by counsel. I tried to make it clear yesterday that my point merely went to the question of the subscription right and I did not want that foreclosed.

THE COURT: Is Mr. McKay still a director?

MR. KRESEL: He is no longer a director.

THE COURT: There is no contention that his successor had any of the stock?

MR. ANDERSON: No, I do not think there is any question about that. He did not have any of the common stock.

MR. KRESEL: The Court's inquiry is as to whether there is any claim that Colonel McKay's successor as director had any stock holdings. I understand there is no such claim.

MR. ANDERSON: I do not make any such claim.

THE COURT: What was his name?

THE WITNESS: Haaren.

MR. KRESEL: If your Honor please, I am going to ask the privilege of having Defendant's Exhibits L, M and N for Identification, marked in evidence, with the understanding that they are

not to be printed, but that each side may refer to those in the same way that we marked two or three that were introduced yesterday. Is there any objection, Colonel?

MR. ANDERSON: No.

THE COURT: The same as 49 and 50, 48 and 51 being Government exhibits. Let them be so marked.

Defendant's Exhibit L for Identification received in evidence and marked "Defendant's Exhibit No. 96." (*Not printed.*)

Defendant's Exhibit M for Identification received in evidence and marked "Defendant's Exhibit No. 97." (*Not printed.*)

Defendant's Exhibit N for Identification received in evidence and marked "Defendant's Exhibit No. 98." (*Not printed.*)

MR. KRESEL: And in this same connection I am going to ask your Honor to indulge me a little further.

Q. 318. Mr. Garvan, I show you a pamphlet entitled "An exhibit prepared under the auspices of the National Research Council with the co-operation of the Chemical War Service of the United States Army", and ask you whether The Chemical Foundation distributed that pamphlet? And if so, please state the extent of the distribution.

A. They published and distributed to the extent——

Q. 319. Published at its own expense?

A. At the Foundation's expense.

Q. 320. Yes?

A.—to the extent of 580,240 copies, that going to soldiers and colleges and Chambers of Commerce, much the same list as Scout Masters—much the same list. That was a chemical exhibit to show the relation between the organic chemical industry and our national

defense, which exhibit is now in the Smithsonian Institute that I referred to yesterday.

MR. ANDERSON: Now just ask him to stick to the question, because the contents of that exhibit I do not know anything about, and I would rather have it stricken out.

MR. KRESEL: I am going to introduce it anyhow. I doubt if it does any harm. But if Colonel Anderson insists, I will consent that that part be stricken out.

I offer that exhibit in evidence.

MR. ANDERSON: I note an objection to the introduction of this paper on the grounds of the general objection and on the further ground that it is not evidence of any facts as against the plaintiff here. I do not know the contents of the paper, but a paper issued under the circumstances stated certainly would not be evidence against the plaintiff. I am perfectly willing, subject to my objections already taken, to have the paper identified as one of the papers distributed by the Chemical Foundation, but I do not think it is evidence in this case.

THE COURT: As I understand it, that is all it amounts to. I do not understand that the contents are introduced for the purpose of supporting any facts, but merely as indicating the character of the work being done by this organization.

MR. KRESEL: Quite right, your Honor.

MR. ANDERSON: To make it clear, I did not make the objection because I thought it was understood as to the books, etc., formerly introduced.

Received in evidence and marked "Defendant's Exhibit No. 99." (*Not printed.*)

Q. 321. Mr. Garvan, please state with reference to this pamphlet that I now show you, entitled "Depart-

ment of the Interior, Bureau of Education" as to whether the Chemical Foundation had anything to do with the publication or distribution of that?

A. It was gotten out by the Department of Education and we had to do with the extent of the circulation. I would have to look up those figures to see just how we cooperated. We either paid for the printing or the clerical work or something of that kind. That was distributed to every teacher in the United States, in High Schools, and I think the list was something like 75,000 of the teachers of the country. It has to do with what chemistry should be taught in High Schools.

MR. KRESEL: The pamphlet is entitled, "Department of the Interior, Bureau of Education, Bulletin 1920, No. 26, reorganization of science in secondary schools. A report of the Commission on the reorganization of secondary education, appointed by the National Educational Association" and appears to have been printed at the Government printing office. I offer that in evidence.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 100." (*Not printed.*)

Q. 322. This is the last one, Mr. Garvan. Please state with reference to this pamphlet entitled, "The Dyes Question," what connection if any the Chemical Foundation had with its publication or distribution, or both?

A. This is a reprint of an article by James Morton, Chairman of Scottish Dyes, Ltd. It shows——

Q. 323. Do not state what it shows. Simply state what the Foundation did with reference to it.

A. We reprinted it and distributed it to all the newspapers and editors of the country.

MR. KRESEL: I offer that in evidence.

MR. ANDERSON: The same objections and limitations apply to all these papers, I understand.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 101." (*Not printed.*)

Q. 324. Mr. Garvan, with reference to Defendant's Exhibit No. 87, which is the big license to the Government covering the 5700 patents, I omitted to ask you yesterday—at least I think I omitted to ask—what consideration the Government paid the Alien Property Custodian for that license and release.

A. $100,000.

Q. 325. Mr. Garvan, did you have prepared and do you now produce a statement showing the earnings on the 874 trademarks acquired from the Alien Property Custodian by the Chemical Foundation covering the entire period from April 10, 1919 to December 31, 1922?

A. I did.

Q. 326. And is this the statement (handing paper to witness)?

A. It is.

MR. KRESEL: Colonel, this is a summary and a detail sheet attached to it. I offer that in evidence.

THE COURT: With the same force and effect as if testified to in detail by the witness?

MR. KRESEL: Yes, your Honor.

THE COURT: So admitted.

Received in evidence and marked "Defendant's Exhibit No. 102." *(See Exhibits, Vol. IV, page 2671.)*

Q. 327. Using that exhibit, Mr. Garvan, please state the total earnings by the Chemical Foundation from these trademarks for the period beginning April 10, 1919 and ending December 31, 1922.

A. $11,196.76.

Q. 328. And the average annual gross income thereon was what?

A. $2,985.80.

Q. 329. For each trademark what was the average annual gross income?

A. Three dollars and forty-two cents.

Q. 330. Have you had calculated the proportion of the expenses of the company applicable to the trademarks?

A. I have.

Q. 331. What proportion to each trademark?

A. Twenty dollars and eighty-eight cents.

Q. 332. Per year?

A. Per year.

Q. 333. Have you added thereto the interest on the investment, proportionately?

A. At six per cent., $4.12.

Q. 334. How much?

A. Four dollars and twelve cents.

Q. 335. Have you had calculated the amortization thereon?

A. I have.

Q. 336. How much does that amount to?

A. Three dollars and seventy-four cents.

Q. 337. If you add the proportion of expense, the interest on the investment and the amortization, that gives you a total outlay of how much?

A. Twenty-eight dollars seventy-four cents.

Q. 338. Per year?

A. Per year.

Q. 339. Per trademark?

A. Per trademark.

Q. 340. And the gross income per year per trademark is how much?

A. Three dollars forty-two cents.

Q. 341. What is the difference?

A. What difference do you mean?

Q. 342. The difference between the gross expense and the gross income per trademark per year?

A. Twenty-five dollars thirty-two cents is the deficit.

Q. 343. That is a loss of that amount?

A. Yes.

Q. 344. Have you had prepared a statement of income received by The Chemical Foundation on the salvarsan and neosalvarsan patents?

A. I have.

Q. 345. Please state first how many licenses the Chemical Foundation has issued covering those patents, giving the names of the licensees.

A. Five.

Q. 346. Will you give the names?

A. Abbott Laboratories, Incorporated, who succeeded to the Schamberg license in Philadelphia; E. R. Squibb & Sons, Malinckredt Chemical Company; Powers Weightman Rosengarten & Company; Empire State Chemical Company. Then there was an infringer from whom we collected $150.

(No Q. 347)

(No Q. 348)

Q. 349. Who was that?

A. E. J. Lukenback.

Q. 350. Please state the total amount that was collected by The Chemical Foundation between April 10, 1919 and December 31, 1922, on these salvarsan and neosalvarsan patents, on licenses issued by The Foundation.

A. Do you mean to include the Dermatological after it came to us?

Q. 351. Yes.

A. $37,503.14.

Q. 352. That is the total collected by The Chemical Foundation?

A. Yes, sir.

Q. 353. In that amount is there any amount included that was paid under a license that was made by the Federal Trade Commission?

A. Oh, no. No, it is paid by a licensee of The Federal Trade Commission.

Q. 354. That is what I mean.

A. But after he had surrendered his license to The Federal Trade Commission and taken out a license from us.

Q. 355. Who was that?

A. That was the Dermatological of Philadelphia, the successor of whom is the Abbott Laboratories of Chicago.

Q. 356. Dermatological Research Laboratories?

A. Yes.

Q. 357. I wish you would sub-divide, if you will, the total amount collected, which you say was $37,503.14, as between the amount paid by the Dermatological Research Laboratories, which had been a licensee of The Federal Trade Commission, and those licenses that were originally issued by The Chemical Foundation.

A. The Dermatological people, who formerly held the license from The Federal Trade Commission have paid us $31,466.60.

Q. 358. $31,466.60?

A. Yes sir, or 83-9/10 per cent. of our entire collections on arsphenamine and neoarsphenamine.

Q. 359. And when you say arsphenamine and neoarsphenamine, you are talking about the same patents that I have described as the salvarsan and neosalvarsan patents?

A. Yes, arsphenamine is the American name.

Q. 360. The total amount collected by The Chemical Foundation on licenses issued direct by it was how much?

A. $6,036.54, or 16-1/10 per cent. of our total.

Q. 361. And in this statement that you have had prepared and as to which you are now testifying, have you given in detail the amount received from each of your licensees?

A. I have.

MR. KRESEL: I offer that in evidence.

THE COURT: For the same purpose as the preceding licenses?

MR. KRESEL: Yes, your Honor.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 103." (*See Exhibits, Vol. IV, page 2674.*)

Q. 362. Mr. Garvan, it has been testified here that 57 so-called pre-war contracts had been assigned to The Chemical Foundation by the Alien Property Custodian. Has the Chemical Foundation received any return on those pre-war contracts?

A. It has.

Q. 363. Have you had prepared a statement showing the amount so received?

A. Yes, I have.

Q. 364. And do you produce the statement and is this it (handing paper)?

A. It is.

MR. KRESEL: We offer that in evidence.

THE COURT: Admitted.

Received in evidence and marked "Deant's Exhibit No. 104." (*See Exhibits, Vol. IV, page 2675.*)

Q. 365. Please state the total amount that The Chemical Foundation received on those pre-war contracts between April 10, 1919 and December 31, 1922.

A. Two thousand four hundred forty-two dollars six cents.

Q. 366. Can you tell us, Mr. Garvan, how many

patents were assigned by the Alien Property Custodian to The Chemical Foundation? Have you a statement there?

A. A statement of what?

Q. 367. How many patents were assigned to The Chemical Foundation?

THE COURT: Was that not given yesterday?

MR. KRESEL: Yes, your Honor; but your Honor will recall that the number given, 4,919, included some applications that had matured into patents.

THE COURT: Yes.

MR. KRESEL: I want to get the number of patents as such and then take up the applications.

A. They marked those papers of mine in evidence, the copies I had. They are not here.

Q. 368. Will you use this, then, please? (Handing paper) Just state how many patents.

A. Four thousand seven hundred sixty-four patents.

Q. 369. And how many applications?

A. Two hundred eighty-eight.

Q. 370. And how many trademarks?

A. Eight hundred seventy-four.

Q. 371. And how many copyrights?

A. Four hundred ninety-two.

Q. 372. And how many pre-war contracts?

A. Fifty-seven.

Q. 373. So that giving to these things the general term of "properties", how many properties were assigned?

A. Six thousand four hundred seventy-five.

Q. 374. Have you had prepared a statement showing the earnings on these 6,475 properties so acquired from The Alien Property Custodian between April 10, 1919 and December 31, 1922, with data and results in respect to the various sources of income and expense thereon?

A. I have.

Q. 375. And is this the statement? (Handing paper.)

A. It is.

MR. KRESEL: I offer that in evidence.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 105." *(See Exhibits, Vol. IV, page 2676.)*

Q. 376. As I understood your testimony yesterday, it was to the effect that your income on patents was of two sources?

A. Yes, sir.

Q. 377. Income on manufactures and income on imports?

A. Yes, sir.

Q. 378. Have you divided the total income on patents, which you testified yesterday was $661,706.28, into those two classes?

A. I have.

Q. 379. Will you state how much was collected by The Chemical Foundation under its licenses covering manufactured products?

A. Two hundred ninety-six thousand two hundred thirteen dollars forty-one cents.

Q. 380. And what period does that cover?

A. That covers from April 10, 1919 to December 31, 1922.

Q. 381. How much was collected by The Chemical Foundation during that same period on imports?

A. Three hundred sixty-five thousand four hundred ninety-two dollars eighty-seven cents.

Q. 382. And that gives you a total of how much?

A. Six hundred sixty-one thousand seven hundred six dollars twenty-eight cents.

Q. 383. Now please add thereto, if you will, the amount collected on contracts?

A. Two thousand four hundred forty-two dollars six cents.

Q. 384. And the amount collected on trademarks?

A. Eleven thousand one hundred ninety-six dollars seventy-six cents.

Q. 385. Please state whether those three items constitute the total income received by The Chemical Foundation during this period on all the properties assigned to it by The Alien Property Custodian.

A. Yes, sir.

Q. 386. What is the grand total?

A. Six hundred seventy-five thousand three hundred forty-five dollars ten cents.

Q. 387. Will you state whether you have had calculated the annual return?

A. Annual gross return?

Q. 387 (continued). Annual gross return on those 6,475 properties?

A. I have.

Q. 388. And how much annually does it amount to?

A. $181,436.04.

Q. 389. Have you had that dividend so as to determine what the annual gross return was on each property?

A. I have.

Q. 390. And how much does that show?

A. $28.02.

Q. 391. Have you had calculated the amount of the expense applicable to each property acquired from The Alien Property Custodian?

A. I have.

Q. 392. And what does that show per year?

A. $20.88.

Q. 393. And have you added thereto interest on your investment at 6 per cent?

A. We have.

Q. 394. And what does that amount to per property?

A. $4.12.

Q. 395. Each year?

A. Each year.

Q. 396. And have you allowed for amortization of these properties per year?

A. We have.

Q. 397. And how much does that amount to per property?

A. $3.74.

Q. 398. What is the total of the expense, interest on investment and amortization of properties per year, per property?

A. $28.74.

Q. 399. And what does that show comparing it with the gross income per property?

A. It shows a net loss of 72 cents per property, per year.

Q. 400. Have you had prepared, Mr. Garvan, a statement showing the division of earnings from patents as between product and process patents?

A. We have.

Q. 401. Covering what period?

A. April 10, 1919 to December 31, 1922.

Q. 402. And have you had prepared a summary and a detail schedule for each patent?

A. We have.

MR. KRESEL: We offer that in evidence.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 106." (*See Exhibits, Vol. IV, page 2677.*)

Q. 403. Have you had prepared and do you now produce a statement of earnings from royalties and license fees by individual patents, showing what each patent earned?

A. We have.

Q. 404. Covering what period?

A. April 10, 1919 to December 31, 1922.

MR. KRESEL: I offer that in evidence.

Received in evidence and marked "Defendant's Exhibit No. 107." (*See Exhibits, Vol. IV, page 2689.*)

Q. 405. Have you had prepared a statement showing the income received by the Chemical Foundation on the tanning patents which had been assigned by the Alien Property Custodian to the Chemical Foundation?

A. We have.

Q. 406. Were you present in court when Dr. Holdermann testified with reference to these tanning patents?

A. I was.

Q. 407. Have you had the statement that we are now discussing so prepared as to cover all of the tanning patents that Dr. Holdermann testified about?

A. We have.

Q. 408. And have you included in the statement any other tanning patents?

A. First, all that he testified about; second, our other tanning patents; then the total; each group totalled and then the two groups totalled.

MR. KRESEL: We offer this in evidence.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 108." (*See Exhibits, Vol. IV, page 2699.*)

Q. 409. Will you please state what was the total amount of income received by the Chemical Foundation, for the period from April 10, 1919 to December 31, 1922, upon the tanning patents testified to by Dr. Holdermann?

A. $9546.82.

Q. 410. And that included how many of these tanning patents?

A. Thirteen.

Q. 411. Has the Chemical Foundation received any income on other tanning patents?

A. It has.

Q. 412. On how many additional ones?

A. Three.

Q. 413. And what is the total amount received on those three for the period mentioned?

A. $1,876.47.

Q. 414. What is the total amount of income received by the Chemical Foundation during the period stated on all the tanning patents?

A. $11,423.29.

Q. 415. Can you state from this last exhibit the date when the first of those tanning patents was issued?

A. Yes, sir.

Q. 416. What is the date?

A. The 9th day of September, 1919.

Q. 417. I think you are in error about that. The date when it was issued—the patent and not the license.

A. I beg your pardon, I thought you said the license.

Q. 418. No, I mean the date of the patent.

A. The 10th day of March, 1914.

MR. KRESEL: Perhaps your Honor would like to know the reason I asked that question, and I think it is well your Honor should know. Your Honor will recall that Dr. Holdermann undertook to testify to the value of these patents as if the patents were in existence in 1913, and it is as of that date that he gave the German income on

these patents. I am reminded that he also testified that in that year 1913 the Germans received $5,000 as income from imports under these patents, when in point of fact the patents had not even been issued.

MR. ANDERSON: Had application been filed?

MR. KRESEL: Yes, the application had been filed, but they do not receive income on a patent that is not in existence, even though an application is filed, do they?

Q. 419. Have you prepared a statement, Mr. Garvan, showing a comparison of the values of the domestic and imported dyes covered by the patents owned by the Chemical Foundation, as against domestic and imported dyes used in the United States that were not so covered?

A. I have.

Q. 420. For what years have you had that done?

A. 1919, 1920, 1921. The figures of the Tariff Commission are not out for 1922.

Q. 421. The figures as to dyes covered by your patents of course you took from your records?

A. Yes, sir.

Q. 422. The figures as to the country's use you took from the Tariff Commission reports?

A. Yes, sir. The figures for ourselves include 1922.

Q. 423. I understand. Is this the statement that you have had prepared upon the subject (handing witness)?

A. Yes, sir.

MR. KRESEL: I offer that in evidence.

MR. ANDERSON: If your Honor please, I have not objected to these statements because, of course, I can test the witness's knowledge of them and then make such motion as the situation may

require, instead of objecting at this time. But I do object to a statement not only made up from the witness's books, but from various documents and records not produced here and which we know nothing about.

MR. KRESEL: We have the Tariff Commission reports.

MR. ANDERSON: (continuing) And which we have had no chance to examine; because we have never seen these statements, never saw them until they were offered in evidence, and had no opportunity to check them. These statements come from a witness who I do not think could qualify to speak on that subject of his own knowledge. Therefore I will have to object to the introduction of this statement, and if it be introduced of course I shall reserve the right to test his knowledge to the fullest extent.

THE COURT: Do you propose to offer the records from which this statement or tabulation is prepared?

MR. KRESEL: I am just about to offer the Tariff Commission reports. I did not think it would be necessary to do it at this time, but I quite recognize Colonel Anderson desires me to do it. I shall now offer in evidence the report of the United States Tariff Commission for the year 1920. The pamphlet is entitled "Tariff Information Series No. 23 Census of Dyes and Coal-Tar Chemicals 1920."

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 109." (*Not printed.*)

MR. ANDERSON: I have not seen that report. Do you think it is necessary to print that entire report?

MR. KRESEL: I doubt it very much. I think we can agree upon what portions should be printed; of course, with the understanding that each side may refer to any other portion.

THE COURT: When you have some leisure after this trial ends, if you can agree upon a tabulation of the facts that you want, taken from those records, if the Government sees fit to agree —I do not know whether it will and I do not suggest that it will or should agree. But the Government and the defendant might agree that the tabulation is correct and then these can in effect be withdrawn.

MR. KRESEL: Yes. I offer in evidence the report of the United States Tariff Commission for the year 1921. It is entitled "Tariff Information, Series 26, Census of Dyes and other Synthetic Organic Chemicals for 1921."

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 110." (*Not printed.*)

MR. KRESEL: I offer in evidence a report of the United States Tariff Commission for the year 1919 entitled "Tariff Information, Series 1922, Census of Dyes and Coal Tar Chemicals for the year 1919."

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 111." (*Not printed.*)

MR. ANDERSON: If the Court please I am perfectly willing to agree with counsel now, assuming that there are available copies of that report, that none of those reports be printed in the record of this case, but, being official publications of

the Government, either side may refer to them in argument and use such portions thereof as they may desire in their briefs without printing them in the record; because I have no doubt they are available, and if that is the case, it would be quite a useless expense on either side to print all that statistical data, nine-tenths of which has no application to this case.

MR. KRESEL: We are both trying to arrive at exactly the same result and we will cooperate with the Government in any way that will be necessary.

THE COURT: It may be all right to do that for one or two exhibits. As far as I am concerned, I am not particularly interested. As far as the Appellate Courts are concerned, it might be well to consider whether it is practical to leave out very many from the record.

MR. ANDERSON: I do not think it could be done to any extent, but as to these official reports of the Tariff Commission which have just been introduced, I have no doubt a number of copies are available and could be furnished to the Appellate Court if desired. By agreement of counsel, they could be eliminated from the printed record, this being always in this Court for verification of the correctness of the copy used. That would save an enormous expense.

THE COURT: I think it is well to leave out as much as you can, but I do not want to be a party to an understanding——

MR. ANDERSON: I merely make that suggestion to counsel at this time, because he might overlook it after the trial.

MR. KRESEL: I offer in evidence a report of the United States Tariff Commission entitled

"Report on Dyes and Related Coal Tar Chemicals, 1918, printed for use of the Committee on Ways and Means of the House of Representatives."

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 112." (*Not printed.*)

MR. KRESEL: I offer in evidence a report of the United States Tariff Commission entitled "Tariff Information, Series No. 15, Costs of Production in the Dye Industry, 1918 and 1919, details of costs for a selected list of dyes and intermediates."

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 113." (*Not printed.*)

MR. KRESEL: I offer in evidence a report of The United States Tariff Commission, entitled "Tariff Information, Series No. 11, Census of Dyes and Coal Tar Chemicals, 1918."

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 114." (*Not printed.*)

MR. KRESEL: I offer in evidence a report of the United States Tariff Commission for 1917 which is entitled, "Tariff Information, Series No. 6, Census of Dyes and Coal Tar Chemicals, 1917."

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 115." (*Not printed.*)

MR. KRESEL: I offer in evidence a publication of the Department of Commerce, Bureau of Foreign and Domestic Commerce, entitled "Special Agent, Series No. 121, on Artificial Dye Stuffs used in the United States, quantity and value of

foreign imports and of domestic production during the fiscal year 1913-1914."

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 116." (*Not printed.*)

Q. 424. Mr. Garvan, we will return to the question last asked you, the statement that you say you had prepared with reference to the comparison of dyes covered by your patents and the total dyes used in the United States. Is this the statement that you speak of?

A. It is.

By THE COURT:

Q. 425. Was that prepared by this witness?

A. Under my direction, yes.

Q. 426. Did you check it up?

A. I did not add it up.

THE COURT: I was wondering whether that statement should not better come from the person who did the work rather than from this witness. It could be embodied in your brief as a tabulation, but I do not see how it can be given any strength by the fact that this witness asked to have it done, when he did not do it. Do you? I have no objection——

MR. KRESEL: No, your Honor; I do not want it put in if your Honor is not going to give it the weight that I want your Honor to give it.

THE COURT: I shall be glad to have a tabulation of course. It would be convenient and useful, but I understood one of Colonel Anderson's objections to this was that it was not prepared by this witness.

MR. KRESEL: I was trying to avoid the necessity of calling another witness, but I quite recog-

nize that Colonel Anderson has a right to insist that I call the man who made the actual tabulation; and I shall do it. I withdraw the question.

THE COURT: Am I correct, Colonel Anderson?

MR. ANDERSON: You are correct. In order that Mr. Kresel may understand my point at this time, I might say that when we were trying to put in evidence on this subject, we furnished statements in advance to counsel. I am not saying that he is not acting well within his rights. I am not implying any criticism because these are very difficult things to prepare. When we introduced our statements, they were checked, but even then we had to produce original records.

If I knew the actual facts were as set forth in this statement, I would just as soon agree to them on the record as to have the statement proved by the witness. I am practical in these things. But these are very voluminous statements and cover an enormous range of territory. We have never seen them until they were handed to us in Court. I will facilitate the introduction of the evidence in every way I can, but I must protect the question of its accuracy.

THE COURT: So far as I am concerned, it is immaterial whether that appears as an exhibit in the exhibit books or whether it appears in an appendix to your brief, showing your understanding of what the Tariff Commission reports purport to show; and then if there is a difference between you, you can each do the same thing. It is immaterial to me whether it is in the exhibit book or in the appendix to the brief. It would have the same value either way unless put in by the person who actually made it.

MR. ANDERSON: Mr. Kresel, suppose you let

Mr. Garvan put it in and it will be understood that it will be subject to our checking. If I find it is correct, I will not move to strike out that particular statement, reserving the right as to the others. In other words, I want the facts to appear.

MR. KRESEL: I am very much obliged. Colonel Anderson states I may put it in by Mr. Garvan subject to correction, which of course is all right.

MR. ANDERSON: That applies to the particular statement that you are now referring to.

MR. KRESEL: Yes. I therefore offer this statement in evidence subject to correction.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 117." (*See Exhibits, Vol. V, page 2703.*)

MR. ANDERSON: I just want to note on the record as to Defendant's Exhibit No. 117, in connection with the statement made by counsel as to its going in subject to checking, I also reserve the right to object to the notes of the compiler on this statement purporting to be explanatory thereof.

MR. KRESEL: That is perfectly all right.

By MR. KRESEL:

Q. 425. Mr. Garvan, looking at Defendant's Exhibit No. 117 that has just been introduced, will you state the total amount of sales of domestic dyes, according to the Tariff Commission reports, you understand, in 1919?

A. $67,598,855.

Q. 426. And in 1920?

A. $95,613,749.

Q. 427. And in 1921?

A. $39,283,956.

Q. 428. The total is what?

A. $202,496,560.

Q. 429. Looking at the figures covered by the patents of The Chemical Foundation, what was the income from domestic manufactured dyes in 1919?

A. $9,478.91.

Q. 430. Have you the total of such income for the years 1919 to 1922, inclusive?

A. Yes, sir.

Q. 431. And what is that?

A. $270,279.69.

Mr. Anderson: If your Honor please, as to so much of this statement as is a compilation from those records, I am perfectly willing, subject to verification, to have the compilation go in for convenience of reference to the records that have been introduced.

As to so much of this statement as contains matter taken from the books of the Chemical Foundation, or as to the income of the Chemical Foundation, and the annotations of calculations and applications of percentages, and so forth, thereto, I reserve all rights, and I think I will be compelled to make a motion to strike out that part of it.

I am a little embarrassed, because I have not time to study these statements, and I do not want to embarrass counsel beyond the necessities of the situation.

Mr. Kresel: Colonel, I would not ask you to do anything which would foreclose your rights.

Mr. Anderson: Yes.

Mr. Kresel: I am perfectly willing that you shall reserve the right at any time before the end of the trial to move or strike this out, after examination.

Mr. Anderson: And of course, if that goes out, the examination of the witness on the record will also apply to the same thing.

MR. KRESEL: If there is any question in connection with what the Court grants your motion to strike out, then of course the testimony goes out.

MR. ANDERSON: With that understanding I will let the matter stand as it is, preserving all rights in that regard.

THE COURT: Do I understand that these other statements are made up from the books of the Chemical Foundation?

MR. KRESEL: Those that have already gone in, your Honor, or this last one?

THE COURT: The one to which Colonel Anderson just referred.

MR. KRESEL: Made up from both sources, the books of the Chemical Foundation and the Tariff Commission reports.

THE COURT: But Colonel Anderson does not object to the Tariff Commission reports. His last objection was directed to the tabulation from the books of the defendant, as I understood it.

MR. KRESEL: No, I think your Honor misunderstood Colonel Anderson. Your Honor will be better able to understand his objection if you have this before you (handing paper).

Your Honor will see the first two columns there show the amounts of sales of domestic producers as per the Tariff Commission reports and the income of the Chemical Foundation on domestic products. We had then put on the following calculation: "Based on average royalty of four per cent. the approximate value is $6,000,000"—it is really six million odd—"or 3.33 per cent. of the total domestic sales." It is that portion which I understand Colonel Anderson is challenging. He says he has not had time to examine——

THE COURT: That is a mathematical calculation.

MR. KRESEL: Yes, which I can make in my brief as well as I can have it made here.

MR. ANDERSON: No, I do not think Mr. Kresel understood me. I want to get it clear, I do not want any mistake. At the proper time on cross-examination it is my purpose to test the knowledge of this witness as to all statements which he has put in here, and when that time comes I will make such appropriate motion as I feel is necessary, striving not to be over-technical.

As to the Chemical Foundation income, that is a statement from the books of the Chemical Foundation, I have not tested the knowledge of this witness on that subject at all. As to the compilation from the official records of the Government, that is a mere matter of mathematics, and we can check it. If it is right I have no objection to its going in in this form; if it is wrong we can call attention it—following each of the statements taken from the Government reports for 1919, 1920 and 1921, which are compilations of official figures, official figures and argumentative statements, if I might so call them, taken from the records presumably of the Chemical Foundation. I did not wish my statement on the record that subject to verification this compilation might go in, and subject to first testing his knowledge, to apply, for the reason that I want to reserve if I am so advised the right to strike out all this evidence as to the statistics of the Chemical Foundation unless it be shown to have a proper foundation. Do I make myself clear now?

THE COURT: Do you mean by proper foundation that this witness has no personal——

MR. ANDERSON: Yes, sir; I want to know who

did make these statements, where they came from, their source and everything else when I come to examine this witness. Therefore I do not want to waive any rights in that regard. But as to these official compilations, if they are right I am perfectly willing to stipulate them on the record.

MR. KRESEL: I simply desire at this time to direct the Court's attention to the fact and to remind Colonel Anderson that there is a stipulation between the parties with reference to the use of the books of the Chemical Foundation. I think it was read into the record by Mr. Galloway at the opening of the trial. That is to the effect that either side may put in computations from the books of the Chemical Foundation without being required to produce those books; the Chemical Foundation, however, agreeing to produce any books at any time that the Government may desire to have produced.

MR. ANDERSON: I do not understand the stipulation to go to that extent, Mr. Kresel, and I think it is well to get it.

MR. KRESEL: I will find the stipulation.

MR. ANDERSON: Certainly I never intended to stipulate anything of that kind.

MR. KRESEL: I say now that if Colonel Anderson desires our books produced here they will be here just as soon as the train can bring them. Haven't you the original stipulation, Mr. Galloway?

MR. GALLOWAY: I have it, but I have not it here.

MR. KRESEL: I do not know whether this that I have here is a true copy or not.

MR. GALLOWAY: I think you will find that the only reference to the books of account of the Chem-

ical Foundation is back here on the schedule (indicating).

MR. KRESEL: No.

MR. GALLOWAY: That is the only reference I recall.

MR. KRESEL: Your Honor will grant me just a minute until I find what I have reference to.

I read from page 878 of the record. This is a part of the stipulation which was read in by Mr. Galloway, headed "Books of Accounts":

"It is further stipulated and agreed that the defendant need not produce its books of account upon the trial unless the plaintiff specifically requests the production of some particular book or books; that either side may use transcripts or extracts from said books subject to the right of either party to call attention to and have corrected any errors in such transcript, extract or compilation at any time during the trial and that in connection with the testimony of any witness as to compilations based on entries in said books, it shall not be necessary as a basis for such testimony to put said books in evidence."

I thought my recollection was correct.

MR. ANDERSON: I agree to that, but I do not think that removes the necessity for putting a witness on the stand to say that he himself made these statements and as an accountant is capable of testifying to them.

MR. KRESEL: Let me understand that. Do I understand Colonel Anderson now to claim that these compilations that we have spent half a day putting in are not competent because the accountant who made them is not put on? If so, counsel should have called attention to that before we spent half a day thereon. Of course, Mr. Garvan did not make them personally.

MR. ANDERSON: One minute now. If your

Honor please, as he says counsel should have called attention to that, I will say that I am following the exact procedure he has followed in putting in the other evidence. I put in various statements which had been checked by the accountants of the other side, by Mr. Storck.

The original records were not here, and counsel, on cross-examination of Mr. Storck, tested whether he personally had made up every one of those figures. He said they were made up by him or made up under his direction and he then called for the production of the original documents.

MR. KRESEL: I beg your pardon——

MR. ANDERSON: And we had to send to Washington and bring them and introduce the original records of the Federal Trade Commisson and the licenses.

MR. KRESEL: Colonel Anderson, please—you do me an injustice, and I will not——

THE COURT: I will give you all the time you want, Mr. Kresel.

MR. ANDERSON: When this witness was on the stand, I was perfectly willing to have this witness put in these statements to the end that he might say what he had to say about them, subject to my general objections to the evidence. I assumed that counsel would call then the man who made up the statements, and that is the reason this morning it occurred to me that I had probably better say so to test the knowledge of this witness as to the basis of these statements. Then in the event that counsel could cure that defect by producing the persons who actually made up the statements, the evidence of this witness as to the statements might be in the record, instead of recalling him and putting another witness on.

I thought it was serving the convenience and not inconvenience of this case. That is the reason I let the evidence go on in, although it has seemed to me that the witness had not been properly qualified. I did not want to have to break this evidence up by putting one witness on and then another witness, which embarrassment I suffered myself in the introduction of my evidence owing to such objections.

Mr. Kresel: The only objection that I have to Colonel Anderson's statement is an objection to that portion of it wherein he says that I insisted upon the production of original records. Your Honor will recall that I specifically stated more than once that I waived all questions of form.

Colonel Anderson produced the original records because I showed that the compilations that were made by Mr. Storck were valueless because he had not seen and had not put in the necessary detail into his compilations. It was not because I demanded the production of the original records at all, and you will read the record in this case from beginning to end and you will find that I made no such demand.

Now, I say that if any objection is to be taken as to the competency of putting in these compilations by Mr. Garvan, I think it might have been raised at the outset. However, I quite concede that Colonel Anderson has the right to insist on that, and if he does, I shall call the accountant who made them, so as to testify as to them. I have one more compilation and then I am through with that branch of it.

The Court: It seems to me, Mr. Kresel, that while you differ as to what transpired when Colonel Anderson was putting in his case, your recollection with respect to calling for the books

corresponds with my recollection, that he showed that Mr. Storck did not have from the books sufficient information to make up the statement which was made. But it seems to me that you are right, Colonel Anderson, in this particular: that you would be unable to ascertain from this witness that which Mr. Kresel ascertained from Mr. Storck; that is, if Mr. Kresel offers to prove the compilation by somebody who did not make it, then it is impossible to gather any information. So that I think in that particular Colonel Anderson's objection is well taken.

MR. KRESEL: I concede, your Honor, that it is entirely within his rights.

THE COURT: He is entitled to ascertain from the witness, as you did from his witness, as to whether this gives a correct tabulation or not, and that he can not ascertain from this witness on the statements now made. So that I think the objection is well taken.

MR. KRESEL: I want to say that the accountant who made this up is in town and I shall call him, so that Colonel Anderson may have the opportunity to examine him. May I proceed?

THE COURT: Yes.

Q. 432. Mr. Garvan, did you have prepared a comparison acording to the weight of dyes, domestic and imported, as between those covered by patents owned by The Chemical Foundation and the entire amount of dyes consumed in the United States according to the report of the Tariff Commission?

A. I did.

MR. KRESEL: Subject, your Honor, to the same reservation that Colonel Anderson made to the preceding exhibit, No. 117, we offer in evidence this statement.

MR. ANDERSON: I have not had a chance to

study it. I will let it go in subject to my reservation.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 118." (*See Exhibits, Vol. V, page 2704.*)

MR. KRESEL: I offer in evidence a copy of a letter from the Bureau of Trusts of the Alien Property Custodian signed by Charles B. Calvert, dated November 11, 1920, addressed to F. M. Eugen Blass.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 119." (*See Exhibits, Vol. V, page 2705.*)

MR. KRESEL: Your Honor will recall that there was a long line of correspondence put in by the Government with reference to a patent claimed by a man named Blass; that it was claimed we had not re-assigned to him. This letter is one of the series.

THE COURT: That patent covered what?

MR. KRESEL: I do not recall what it covered.

THE COURT: Was that the New Jersey incident?

MR. KRESEL: I do not think that was, and I do not recall what it covered; but that is the patent, you will recall.

THE COURT: If this is further correspondence in connection with the same matter, it is pertinent.

MR. KRESEL: Yes. I am not going to stop to read it now.

THE COURT: Very well.

Q. 433. Mr. Garvan, has the Chemical Foundation had occasion to bring any infringement suits against

persons infringing the patents owned by The Foundation?

A. Yes.

Q. 434. How many of those suits have been instituted?

A. There were some on the trademarks. I am not sure how far they went. I am not positive as to the actual filing. They were settled either just before filing or just after. I am not positive whether the lawyers filed——

MR. ANDERSON: I am afraid I will have to object to that record, sir, as to the question of a number of suits. While I think, of course, that the best evidence of any suit would be the record, I would not object, except for my general objections, to the number of suits, if he knows. But as to what the suits were about, whether they were infringement suits, or things of that kind, I do not think with my present knowledge I could let the evidence go in.

MR. KRESEL: I think the witness has a right to say whether they were infringement suits, and how many. That he has a right to do without producing the written record. I do not propose to go into a trial of those law suits. I am only trying to show what The Foundation had to do with it, and how much money it has spent thereon.

THE COURT: Your purpose being to show the reasons for the infringement suits?

MR. KRESEL: No, your Honor. I simply want to show how many infringement suits there were, and what it cost The Foundation to defend them, because your Honor will recall that one of the purposes and one of the duties set forth in the charter of the corporation is to defend these patents. Now I want to show that The Chemical Foundation did observe that injunction placed

upon it by its charter. I am not even going to ask the names of the persons against whom the suits were brought. I am not interested in that. If the Government desires to go into that on cross-examination, of course, the information is available.

THE COURT: I have not passed finally upon the question; but you may take your answer.

Q. 435. Just say how many of those suits.

A. One.

Q. 436. And how much has it cost?

A. Between twelve and fourteen thousand dollars.

Q. 437. It was testified yesterday that only 491 of the entire number of patents had ever brought in any income, had ever been licensed. What efforts, if any, did The Chemical Foundation make to get people to take out licenses on these patents?

MR. ANDERSON: I object to that question, in the first place, as too indefinite and general; and in the second place, because it calls for a conclusion as to the efforts to get these people to take out patents. I think the counsel can prove what is within the knowledge of this witness, if it be subject to our general and other specific objections. What was the effect or purpose of any specific acts of The Chemical Foundation, I do not think is evidence.

MR. KRESEL: I will withdraw the question.

Q. 438. What acts did the Chemical Foundation do, what steps did it take, to have people get licenses on these patents?

A. It sent out agents to all the industries to explain and interest concerns in the patents. It made analyses of the patents and issued booklets or books on the patents, and sent them to the various members of the industry who might be interested in the development of the patents.

Q. 439. Stop there, please. I show you first a booklet entitled "Temporary List of Patents and Copyrights transferred to The Chemical Foundation, Incorporated." Will you state whether that was compiled by The Chemical Foundation?

A. It was.

Q. 440. Will you state whether that was circulated?

A. It was.

Q. 441. Can you state the extent of the circulation?

A. I cannot.

Q. 442. In connection with that, I show you another publication entitled "Vat Dye Patents owned by the Chemical Foundation." Was that published and circulated by the Chemical Foundation?

A. It was.

Q. 443. Here is another pamphlet entitled, "Patents transferred to the Chemical Foundation, New York City, June, 1921." Was that published and circulated by the Chemical Foundation?

A. It was.

Q. 444. I show you another publication entitled "Drug and Medicinal Patents owned by the Chemical Foundation, Inc." Was that published and circulated by the Chemical Foundation?

A. It was.

Q. 445. I show you another pamphlet entitled, "Electro-Chemical and Electro-Metallurgical Patents owned by the Chemical Foundation." Was that published and circulated by the Chemical Foundation?

A. It was.

Q. 446. I show you another pamphlet entitled, "Paper Patents Owned by the Chemical Foundation." Was that published and circulated by the Chemical Foundation?

A. It was.

Q. 447. Were these all of the pamphlets, circulars and letters that were circulated by the Chemical Foundation in this connection?

A. Probably all the books and pamphlets, but it is not all the letters.

MR. KRESEL: Have you copies of these, Colonel Anderson?

MR. ANDERSON: No, we have not.

MR. KRESEL: Of course, these are now available, but we will try to get you copies. We had always understood that there were copies in your possession.

MR. ANDERSON: We have tried to find them. We have been told there were, tried to find them, but have not been able to.

MR. KRESEL: I am going to offer in evidence each of these publications.

Publication entitled "Temporary list of Patents" received in evidence and marked "Defendant's Exhibit No. 120." (*Not printed.*)

Publication entitled "Patents Transferred to the Chemical Foundation, Inc., June, 1921," received in evidence and marked "Defendant's Exhibit No. 121." (*Not printed.*)

Booklet entitled, "Vat Dye Patents" received in evidence and marked "Defendant's Exhibit No. 122." (*Not printed.*)

Booklet marked, "Drug and Medicinal Patents" received in evidence and marked "Defendant's Exhibit No. 123." (*Not printed.*)

Book entitled "Electro-Chemical and Electro-Metallurgical Patents" received in evidence and marked "Defendant's Exhibit No. 124." (*Not printed.*)

Book entitled "Paper Patents" received in

evidence and marked "Defendant's Exhibit No. 125." (*Not printed.*)

MR. ANDERSON: Mr. Kresel, you have no objection to withdrawing those from the Clerk, have you?

MR. KRESEL: Not at all, if the Court will permit it; I have no objection.

MR. ANDERSON: You will try to get us copies, because we need them?

MR. KRESEL: Yes.

THE COURT: Is that all of that group?

MR. KRESEL: Yes.

THE COURT: They are all admitted.

Q. 448. Mr. Garvan, I show you a copy of a letter addressed to Honorable Thomas W. Miller, dated May 23, 1922, and ask you whether that is a copy of a letter that you wrote to him as president of the Chemical Foundation?

A. It is.

MR. KRESEL: I offer that in evidence.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 126." (*See Exhibits, Vol. V, page 2707.*)

MR. KRESEL: This letter, your Honor, is dated May 23, 1922, and is addressed to Honorable Thomas W. Miller, Alien Property Custodian (reading).

Q. 449. Is this a copy of the reply that you had from Colonel Miller?

A. A photostat copy, yes.

MR. KRSEL: I offer that in evidence.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 127." (*See Exhibits, Vol. V, page 2708.*)

MR. KRESEL: This letter, your Honor, is dated

May 25, 1922, addressed to the Chemical Foundation and signed by Colonel Miller as Alien Property Custodian (reading).

I offer in evidence Article 167 of the Regulations of the Treasury Department with reference to the valuation of patents. I assume, your Honor, that you would take judicial cognizance of the Regulations of the Department; however, it is a short paragraph and I thought it better to specifically offer it.

MR. ANDERSON: Are those the Income Tax Regulations?

MR. KRESEL: Those are the Regulations on Income Tax.

MR. ANDERSON: Taken from the official publication?

MR. KRESEL: Taken from the publication of the—well, this is Income and other Federal taxes as affected by patents, trade-marks, copyrights and good will.

MR. ANDERSON: I do not know that that is correct. That is a textbook.

MR. KRESEL: Is there any objection to my putting it in subject to correction?

MR. ANDERSON: If your Honor please, if we are going to put in those regulations, which I do not think have any bearing whatever on this case because they relate to income tax, and the question of what values are to be considered in this case is a matter for this Court and not for the Treasury Department—I object to it on those grounds, and of course on the special grounds reserved to all this evidence. But if we are going to introduce the regulations of the Tax Department on any issue in this case, then I would want the official regulations, to the end that we may have them complete. I do not know whether the

text writer has undertaken to support his position by the extract or not.

MR. KRESEL: Very well, I have asked Mr. Mahaffy to see if he can get it from the library, the original, and for the moment I will put it aside. You are not willing to let me put it in subject to correction?

MR. ANDERSON: I do not want to take the burden of correction, Mr. Kresel. I think the whole regulation dealing with the subject should go in.

Q. 450. Mr. Garvan, what was the average life of the patents that were transferred to the Chemical Foundation on the date of the transfer?

MR. ANDERSON: I will just make my general objection.

A. Eight and a quarter years.

Q. 451. Prior to the receipt by the Chemical Foundation of the letter of demand signed by Colonel Miller as Alien Property Custodian, which has been put in evidence here, demanding the return by the Chemical Foundation of all the properties that had been transferred to it by the Alien Property Custodian, had any demand of any kind for the return of those patents been made upon the Chemical Foundation?

A. It had not.

Q. 452. Prior to July 1, 1922, which is the date of the President's letter to Colonel Miller, had you appeared before any committees of Congress and had you been questioned before any committees of Congress concerning the transfer of these patents to the Chemical Foundation?

A. I had.

Q. 453. Before how many such committees of Congress had you appeared and testified upon the subject, giving the dates when?

A. In about—I think the first one is about June, 1919, before the House Ways and Means Committee on

the pending Tariff Bill. Later, I think in July, before the Senate Finance Committee upon the hearings on the same Bill. In February, 1922, as I recollect it, before a sub-committee of the Senate Judiciary Committee, the so-called Shortridge Committee, because it was presided over by Senator Shortridge of California.

THE COURT: What was the matter upon which such hearings were had?

Q. 454. Will you please state as to each?

A. The first two were upon the pending provisions of the Tariff Bill asking for an embargo, a selective embargo, upon the importation of dyes and organic chemicals. The third was a sub-committee of the Judiciary Committee, acting under a Senate Resolution introduced by either Senator Moses or Senator King, I am not sure, to investigate an alleged dye monopoly and the relations of the Chemical Foundation.

THE COURT: Are you going to show at some time in this case what the outcome of those several investigations was?

MR. KRESEL: I am going to now, if your Honor will permit me. I think with your Honor's permission I will read a portion of the resolution under which that committee was acting, which will of course show the purpose of the proceedings.

MR. ANDERSON: If you are going into the question of the Shortridge Committee at all I should like the entire resolution to go into evidence; and the best evidence of what took place before the Shortridge Committee is its record.

MR. KRESEL: I have no objection to having the entire resolution go in, but I am going to read what I think is necessary to answer the Court's inquiry, and I think I will read the resolution without reading the preamble:

"RESOLVED, That the Committee on the Judiciary,

or any subcommittee thereof, is hereby authorized and instructed to investigate the charge that the dye industry is controlled by a combination of corporations which is in fact a monopoly and has employed agents, attorneys, and lobbyists to influence Congress in behalf of special legislation in the interest of such monopoly; to investigate the activities and methods of importers of dyes from Germany, and their agents, attorneys, and lobbyists to influence Congress in behalf of special legislation; and to investigate the dye and chemical industries of the United States, and the supply and distribution methods, within the United States and elsewhere, of the German dye and chemical industries, with a view to recommending proper legislation; and report its findings to the Senate, together with such recommendations as it may deem appropriate.

"RESOLVED FURTHER, That the Committee is authorized to subpoena witnesses," etc.

Q. 455. Mr. Garvan, according to the volume of proceedings before this committee, it commenced operations on February 20, 1922?

A. That is right.

Q. 456. And you appeared before that Committee, did you?

A. Yes.

Q. 457. And were questioned about the Chemical Foundation?

A. Yes, sir.

Q. 458. And these patents that were sold to the Foundation?

A. Yes, sir.

Q. 459. Do you know whether this Committee made a report to the Senate making any findings as to its investigation?

A. I do.

Q. 460. What is the fact about that?

A. It did not make any report.

MR. ANDERSON: What is that?

THE WITNESS: It did not make a report.

MR. ANDERSON: It did not make a report?

MR. KRESEL: It made no report at all.

MR. ANDERSON: I move to strike out any of the evidence of the witness on this subject, and to preserve the record and state my position I think the following is the sound position on that point: The Resolution of Congress or the Senate is an official document of which the Court will take judicial notice in any event, and therefore it is not material whether it is put in evidence or not. But as to any matter with relation to the action of the Committee, in the first place it is not competent for this witness to testify with respect thereto; in the second place, it is not evidence before this Court. If the Court desires to examine the record of that Committee it will find it proceeded as a sub-committee without counsel, making its own investigation, and therefore if it has any bearing on this situation at all it would be for the purpose of giving to this Court the benefit of its conclusions, if it had reached any, or the benefit of the failure to reach the conclusions on an issue now tried before this Court. Therefore it would not be competent evidence and it would not be competent to put into evidence and utterly immaterial and irrelevant to the trial here, because this Court must determine these issues for itself upon the pleadings in this case.

I think that it is proper that I should make that reservation to that question, although I conceive, of course, that for certain purposes recognized by all lawyers in the Courts, the evidence before the Committee can be used.

MR. KRESEL: Is there a question pending? I thought it had been answered.

THE COURT: I suppose it is rather a motion to strike out the answer of this witness.

MR. ANDERSON: I think I did make the motion, sir.

THE COURT: Do you desire to be heard on the motion?

MR. KRESEL: No, your Honor; I think it is a perfectly proper inquiry. If there had been a report made, of course the report would have to be produced. But the question that I put to the witness was whether he knew that any report had been made or no. He said that he did not know and I asked him whether any report was made and he said no. There is no better evidence than that. Even assuming that there had been a collateral matter of this sort, we would not be bound by the rule as to the best evidence.

THE COURT: You press your motion, I assume, because the negative answer of the witness is prejudicial. It seems to me that ends the matter. Had it been in the affirmative, it would have ended the matter so far as this witness is concerned, because then there would have been evidence of the nature of that report which it seems to me possibly would be relevant or advisory or persuasive, in the same way that an opinion of a Court elsewhere would be helpful, or the action of either of the other departments of the Government with respect to a particular matter, although not at all controlling; no more than the decision of a Court in another Circuit would be controlling in the District of Delaware. We take into consideration the views of other Courts on a particular matter.

But, there is no such report here, so I do not see that it is material whether the answer remains or goes out.

MR. ANDERSON: Will your Honor permit me to make the suggestion, as this matter may come up subsequently and we might as well dispose of it?

I submit, with deference, that there is a very wide difference between the decision of a Court, where counsel appear on both sides and argue questions of law and fact and the Court reaches a conclusion, even though it be not binding upon another Court of another jurisdiction, and a hearing before a sub-committee of the Senate, where there are no counsel present, where the proceeding is conductd in the informal way so commonly known, with arguments and hearsay and everything else that can be thrown into a record of that kind. It not only is not evidence of any fact, but their finding would not have any effect whatever upon any Court under such circumstances, not even as persuasive authority. It could not be used in any Court—a hearing conducted in that way.

An adjudication of a Court upon a matter before it on the pleadings is *res adjudicata* as to the parties. A hearing before the sub-committee does not affect anybody's rights. Anybody concerned can go right on and litigate their rights contrary to the conclusions of that committee without being affected in the slightest by its conclusions.

THE COURT: No doubt about it.

MR. ANDERSON: It is merely a matter of information for Congress for the purpose of fixing a general policy but has no effect whatever in a Court of justice and we respectfully submit it cannot be considered by a Court of justice as having any bearing on its conclusions. Therefore, it is irrelevant and immaterial and it is improper to bring before a Court, since it cannot be intended

to have any other effect than to affect the judgment of the Court; and it should not, I respectfully submit, have the slightest effect upon the judgment of the Court.

MR. KRESEL: I am about to introduce reports of the Committees on the other two investigations and I shall be glad at that time, when I offer those, to argue the question as to whether they are material.

So far as this present question is concerned, there was no report, so there is nothing really to be said about it.

THE COURT: It is a moot question now and I shall therefore grant the motion of the plaintiff to strike out the answer.

Q. 461. Mr. Garvan, as to the proceeding before the Committee on Finance of the United States Senate, what was pending before that Committee?

A. The Tariff Bill.

MR. ANDERSON: The best evidence of what was pending before the Committee is the record itself, is it not? It was not only tariff but embargo, as I understand it.

MR. KRESEL: I offer in evidence the proposed Act which the Committee had before it, known as H. R. 8078, 66th Congress, First Session, which is printed at pages 3 to 6 in the volume entitled "Hearings Before the Committee on Finance of the United States Senate."

THE COURT: What was the time?

MR. KRESEL: The hearings before the Committee were in December, 1919, and January, 1920. The exact dates were December 8th, 9th, 10 and 11th.

THE COURT: That gives me all I want.

MR. ANDERSON: That is subject to the general and specific objections and the special objections

which I have just indicated to evidence of this character.

THE COURT: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 128." (*See Exhibits, Vol. V, page 2709.*)

MR. KRESEL: I now offer in evidence the report from the Committee on Ways and Means of the House of Representatives made by Congressman Longworth upon this Bill, an official publication.

MR. ANDERSON: Subject to the same objection.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 129." (*See Exhibits, Vol. V, page 2717.*)

MR. KRESEL: I am going to ask your Honor's indulgence while I read a portion of this report. (Reading).

MR. ANDERSON: May I ask counsel if that report is offered as evidence of the facts therein contained?

MR. KRESEL: Yes, sir. It is offered as evidence of the contents therein contained.

MR. ANDERSON: Then I wish to add the further objection to the general and specific objections already made, that a report of a Committee or sub-committee of Congress is not evidence in the Courts of any facts contained in that report. Even the statement of a Court in a judicial proceeding is not evidence of the facts contained therein unless the printed record upon which the Court was acting is produced and introduced in evidence.

The Committee of Congress, for whom I have the greatest respect, of course, and of whom I wish to speak with the greatest deference, are quasi-

political bodies and they are largely influenced by considerations which cannot come into a courtroom at all; and therefore, what may be the views of a majority report of a Committee dealing with an economic question, what it may believe to be the facts in its arguments, is certainly not a proper subject for consideration by the Court and is not evidence of the facts stated in the report.

I therefore want to make a motion to strike out that report. I might add that it differs from the reports made by requirement of law by officials of the Government to either the President or Congress.

MR. KRESEL: There is no such distinction as Colonel Anderson has just intimated. At the proper time, when your Honor comes to consider this question for a final ruling, I shall be glad to call to your Honor's attention the authorities upon the subject. For the time being it is simply necessary for me to say to your Honor that there is no distinction drawn by the authorities as to the efficacy of a report made by a Committee of Congress or Congress itself and a report made by a Bureau or Department of the Government, either pursuant to a request of the Congress or pursuant to a general statute requiring the making of annual reports.

Your Honor will recall that Colonel Anderson offered a portion of a Federal Trade Comimssion report and read therefrom, and stated at the time that he was contending that whatever was contained in an official report such as he was reading from was proof of the facts therein contained. If there is any question about what Colonel Anderson said, I have the record here and I will read it.

MR. ANDERSON: I admit that you have stated correctly what I said.

MR. KRESEL: Very well. Now then, here is a report from a committee of Congress that had charge of this Bill, that made an investigation of the subject that was under discussion and about to be treated in legislation, and having made such an investigation, they make a report to Congress and state what their conclusions were and what the conclusions were based on. We say that that is evidence of the facts, by which the Government is bound, bound in any suit, bound in this suit, and we are offering this not only to show that such a report was made, but offering to show that those were the facts that were found by Congress and that they were facts.

We have heard here in argument and in opening statement of the sanctity and inviolability of acts of Congress. The Government can not, on the one hand, claim that Congress is supreme and that even by the act of March, 1918, it did not give to the President power to dispose of this property, and on the other hand claim that the action of Congress upon cognate matters is not to be considered by the Court. I do not think that that is a consistent position for the Government to take. We offer this as proof of the facts contained in the report.

MR. ANDERSON: Just a word in reply, sir. In the first place, this is not an act of Congress. If it were, it would not have to be offered in evidence.

MR. KRESEL: Pardon me; may I add another statement?

MR. ANDERSON: Yes.

MR. KRESEL: We offer it also, if your Honor please, as proof of the fact and our contention

that when the Alien Property Custodian and the President did with this property was not an arbitrary disposition thereof, as is charged, and to show what Congress by this legislation, affecting the same industry, did for the protection of the industry. It goes directly to bear out the defense that we urge, that not only had the President the power under the Act to dispose of the property in the way he did, but that the purpose of the disposition of the property was in consonance with the Act of Congress, and upon that ground we say it is material and relevant.

MR. ANDERSON: *Ex post facto* laws are not favored in any event, and are forbidden in many instances; but it would be a most remarkable situation if the acts of the Alien Property Custodian in selling this property in March or April, 1919, could be affected by a report of a Committee of Congress made in December, 1919, the act of sale having taken place under an act passed in March, 1918, or nearly two years prior thereto, and the act itself having taken place at least six or eight months prior to the consideration of this matter by the House of Representatives at all. So that on the last point it seems to me that counsel are taking a position which is a little far-fetched.

As to the introduction of this evidence and the other matters, to come up, we might just as well state our positions fully. In addition to what I have said, which I shall not repeat, the position of the Government has been that an official report, made as required by law or to a superior officer, which I have outlined in full, is evidence of facts prima facie. But the committees of Congress do not come within that scope.

In the second place, an act of Congress is, of course, to be considered by the courts for whatever bearing it may have, because that does not have

to be introduced in evidence. That is the law of the land. But a report of a committee occupies a different position for so many reasons that I would be trespassing upon your Honor's time and somewhat reflecting upon the knowledge of the Court even to undertake to detail these reasons.

Now, in this particular case, as the record discloses, and I presume counsel will show, the Committee on Ways and Means, or a majority thereof (I do not remember which) made a report, part of which has been read to the Court. The House of Representatives, as I now recall, and I am subject to correction if I do not state it accurately, did pass a bill, with what amendments I do not recall, with what modifications from the report I do not recall; but as I understand, it was a bill, a part of the Tariff Act, which imposed an embargo or licensing system as to dyes for a limited period.

That went over to the Senate and the Senate refused to pass that bill, and therefore it never became a law; but to the contrary, the Congress of the United States, as represented in the Senate and the House of Representatives, expressly declared that they did not favor the policy outlined in that bill, and did not accept, so far as their action has been given any force, these statements or reasons upon which that action was predicated in the House as a basis for their action.

In those circumstances to ask a Court of Justice to accept as proof of facts the statements of a chairman of a committee, however distinguished, in advocacy of a proposition for which he may be quite enthusiastic, would be, it seems to me, going a little far in the administration of justice.

If the facts are relevant here, they can be proved by primary evidence, and the Court cer-

tainly cannot try this case upon the views expressed by Mr. Longworth or anyone else, or his committee, either as to the facts or the reasons. If it could, it would certainly greatly simplify the introduction of evidence in litigation which might be affected by such proceedings in Congress, but would certainly greatly confuse the results to be arrived at. And that is particularly true unless it be shown that those views and facts were adopted by the Congress and moulded into law, in which event the facts presented by the committee are no longer material or relevant, but merely the action of Congress as speaking for the views of Congress in their final form.

Whether this report was ever considered, whether it was ever adopted, whether it ever even became a part of the Bill of the House of Representatives, is a question that does not appear. For that reason, your Honor, I submit that all this matter is clearly incompetent, immaterial and irrelevant and should not be put into this record.

MR. KRESEL: Colonel Anderson is misinformed as to the final action upon this report and the bill to which it relates. My information is, and if necessary we will introduce the legislation, that the bill to which the report related was passed by the House, that the bill went to the Senate and never came to a vote in the Senate. That is the situation about it.

As to the effect of the final result as to whether the legislation was or was not passed, it seems to me that is absolutely immaterial, because if it be true that a report made by a department is proof of the facts, it does not always follow that the report is adopted or that the recommendations therein contained are acted upon. By what method of reasoning is it claimed that

simply because the report of this committee was not approved, assuming that it was not, and I say that it was, that therefore it cannot be admitted with the same effect as a report of an underling in some official capacity in an administrative department, as to which the Government admits it is proof of the facts therein contained?

I propose, after this report, to show your Honor the report of the Senate Committee that had this bill in charge, upon the same subject, and I think we have a right to show.

MR. ANDERSON: You admit that that is all hearsay, Mr. Kresel?

MR. KRESEL: Not at all, and the question of hearsay does not enter into it.

THE COURT: It will be received as indicating the action of the sub-committee of the House of Representatives upon a hearing had. As to whether it has any value as evidence is a matter that we have been reserving with respect to all matters and will be reserved here; I can well see how there might be a difference between counsel as to the relevancy of the dye and chemical situation and condition in America, both with respect to dyes as such and with respect to the military effect and value of the by-products; but I fail to see how there can be any difference or where there should be a dispute with respect to a fact which ought to be as well-known to the Government as to anybody else.

I do not pretend to say at this stage of the case what those facts are or were, but I do say that this case should not have to be drawn out day after day and week after week for the purpose of ascertaining what should be a matter that could be agreed upon by counsel *in toto* or specific differences pointed out, not with a view of coun-

sel saying that such testimony is or is not relevant, but if found relevant eventually under our general rule, that this case may not needlessly be prolonged for determining facts which undoubtedly the Government has been in possession of for a great many years.

The motion to strike is denied. You may proceed.

MR. KRESEL: I now offer in evidence the report made by Senator Watson, from the Committee on Finance, on the Bill described as H. R. 8078, this report being made to the Senate of the United States February 13, 1920.

MR. ANDERSON: That is subject to the same objections, if your Honor please.

THE COURT: Yes.

Received in evidence and marked "Defendant's Exhibit No. 130." (*See Exhibits, Vol. V, page 2726.*)

MR. KRESEL: I read from the report.

THE COURT: Is this on the same Bill

MR. KRESEL: The same Bill, your Honor.

THE COURT: Report of the Senate Committee?

MR. KRESEL: Report of the Senate Committee, made by Senator Watson as Chairman of this Committee. (Reads from exhibit.) I skip a portion of this giving a lot of figures relating to production. (Continues reading.)

Your Honor, I have not read the full report. I do not think it is necessary for me to read more than I have.

MR. ANDERSON: If your Honor please, in order to make the record clear, I simply wish to make a motion to strike out this report in so far as it is introduced as evidence or proof of the facts stated therein. In that connection, your Honor

made a statement which I probably did not quite catch the import of; that is, that counsel should agree on certain facts in this case of which the Government obviously had knowledge.

I do not assume, of course, that the Court intended any criticism of counsel for the Government in that regard, but in the first place, your Honor will recall that we made a motion to strike out that portion of the answer upon which this evidence was based and asked for an argument of that motion in advance of the trial. The defendant made a motion to dismiss this Bill and did not set the motion down for hearing on account of the absence of counsel in Europe and illness in the family of one other counsel. We could not set it down for a hearing until the time we moved to set it down, some three or four weeks in advance of the trial, and asked that it be set down in advance of the trial so that the questions of law might be resolved in this case and that we might have some guide in putting in this evidence.

Four-fifths of the evidence that has been produced here as matter of record to my view is as immaterial as a work on astronomy in this case, and therefore the Government is simply objecting. But there is no way we can agree with counsel, because we had no possible idea of the limits to which this case was going to go. I do not say that in any sense meaning that aftersight is better than foresight, but as I urged on the Court at that time, and as the record will show, and urge now, this case is purely a question of law, it can be decided upon the allegations of the Bill as admitted by the Answer on several of its most material questions, which we think are conclusive. We are taking this evidence as best we know how

and presenting it as best we know how under such rules as the Court has laid down.

I am quite frank to say in that regard we have had under the rule which has been followed, to which I have no objection whatever, to go further than under ordinary conditions we would go. But I assumed the Court desired all the facts presented to the end that this matter be decided once and for all.

If there was suggested in your Honor's statement any criticism of counsel for the Government, I wish to make the statement that in my humble judgment at the time and from which I have never changed in any regard, the argument of the preliminary motions in this case would have cut this trial to about one week. It was objected to by counsel of the other side and the Court overruled our motion to set those matters down for hearing.

MR. KRESEL: Will your Honor hear me?

THE COURT: Yes, but I desire to state now that there was no application for a preliminary hearing of any of these motions until after the case had been set for trial on the merits; and in order that there should not be a delay in the trial of this case, the preliminary questions raised by the motion then brought forward were deferred so that if this case was to be tried, it would be tried now and not later.

I will hear you, Mr. Kresel.

MR. KRESEL: I was going to speak on the same point, your Honor. This Bill was filed in September, 1922. Our Answer was promptly filed in October 1922. If the Government desired to argue a motion to strike our Answer or any portion thereof, they had six months before this trial commenced within which to do it. I say six months

even before we took the first testimony of Dr. Holdermann; and it was not until two or three weeks before the trial actually commenced that the Government gave notice of this motion to strike any portion of our Answer. That is as to the first point.

I understand your Honor's statement with reference to counsel agreeing to apply particularly to the question of the control that the Germans had of the dye industry of the United States before the war. That is a matter that is well known. That is a matter that the Government might well have agreed with us upon and not have put up to the proof, so that we have had to spend days and days to do it. And even now, when I offer a report of a Committee of Congress that finds those facts, they object to it when they know well that it is the fact and always has been the fact, recognized by the Government in publications; the Tariff Commission says it; Congress has said it; and yet we have counsel for the Government here trying to keep out the truth about it.

MR. ANDERSON: Now, if your Honor please, as to the somewhat remarkable statement of counsel, I did not want to get into a controversy with counsel in this case and I have tried to avoid it and I am going to avoid it as far as I can. But counsel has criticized our conduct of this case a number of times. I have not criticized the conduct of counsel. I do not believe that that is within our province. Each side must conduct the case under the regulations prescribed by the Court as it sees fit. I have not said a word in criticism of counsel at any time in the conduct of this case and I do not desire counsel to criticize our conduct of this case.

So far as this Court is concerned, the Court

has a right to tell us how it thinks the case should be conducted and to guide us and direct us in its conduct, within the rules of practice prescribed by law. But so far as counsel are concerned, I do not recognize their right to criticize the conduct of this case by the Government, nor am I going, with all deference to your Honor and to the extent that your Honor requires, to submit to their criticism of our conduct of the case. I am tired of that kind of thing.

In the second place, there has never been a suggestion of an agreed state of facts in this case. There has never been any request that we agree upon a state of facts in this case. We ourselves suggested a stipulation and went as far as we could go in the stipulation, but it was not signed until after we got to Wilmington to try this case.

In so far as the facts are concerned, I have no objection to the proof of facts in this case and have stated upon the record time and again, if it was demonstrated to be a fact, I will admit it to save the trouble of proving it. But when it is undertaken to be proved by what I consider to be illegal evidence and arguments, it is not only my right but my duty to object and to put my objections upon the record; and with the consent of this Court and the leave of this Court, I propose to continue to object where I think the evidence is illegal.

As far as a stipulation or agreement of facts as to the control of the dye industry by the Germans in this country prior to the war, the evidence has been cumulative upon cumulative here as to matters going back to 1858. We have objected to that evidence but we have not controverted a particle of it and we do not propose to.

As far as that is concerned, I stated in my opening statement, and I repeat now, that the conduct by the Germans prior to this war has absolutely nothing to do with this case, in my view; but of course, if counsel want to put in that evidence under the leave of the Court, subject to my objection as to its materiality, relevancy, and the other objections stated, then it can go on in. But counsel must conduct his case his way, and I will not complain, and I will undertake with the aid of my associates and the leave of this Court to conduct the Government's case as I think it ought to be conducted.

THE COURT: There is no objection to your doing that and making such objections as you see fit and proper. It did seem to me and still seems to me that the status of the chemical and dye industry in this country at the time of the passage of the Trading with the Enemy Act and the amendments thereto would be a fact that would be clearly within the knowledge of the Government.

My purpose is not now to indicate that such matters are material or relevant in any way. I do not know whether they are or not. I will determine that in the final determination of the cause, if necessary. But it did seem to me that unless those facts were actually in dispute, an agreement could have been reached. I can understand counsel not being willing to agree where the clients are other than the Government of the United States itself and the defendant, that have not the interest in public welfare or the experience in litigation that this defendant has. I fail to see, unless the facts are in dispute, the reason for taking day after day in producing them. I do not

know that that is criticism. If it is, it is. If it isn't, it isn't. You may proceed.

By Mr. Kresel:

Q. 462. Mr. Garvan, what day was it that you say you resigned as Alien Property Custodian?

A. March 11th or 12th.

Q. 463. What year?

A. Nineteen hundred and twenty-one.

Q. 464. Subsequent to that date, did you have any conference with Colonel Thomas W. Miller, your successor in that office?

A. I did.

Q. 465. Can you fix about the time?

A. I should say within two weeks or three weeks after I got out. Just about that time I went to Charleston for a few days' rest and then when I came back, I saw him.

Q. 466. And where did you talk to Colonel Miller?

A. In his office.

Q. 467. In Washington?

A. Yes.

Q. 468. Who was present?

A. I have no recollection of anyone being present but himself and myself.

Q. 469. Will you please state the conversation?

A. I called and told him that my children were in school in Washington and I therefore could not leave Washington until the schools were out; and that I would have a good deal of time and I would be perfectly willing and glad to place any experience that I had had in the office at his disposal during the time that I was in Washington.

I then spoke of The Chemical Foundation. I told him that it was a Government-created institution, that I was tired and did not think it was fair that I should be asked, being out, to go on with the thing.

Q. 470. To go on with what?

A. To go on with carrying on The Chemical Foundation; that its main usefulness was in conjunction with all departments of the Government and in assisting all the other necessities for the protection of the organic chemical industry.

I told him that there would be legislation in Congress, work to do with the Army and Navy, with the Bureau of Education, with the Department of the Interior and the Bureau of Standards, and that it was only if the whole power of the Government was brought together to bear upon the question of education in the colleges and the schools and in the industries, etc., that anything could be accomplished.

I explained to him that it was not as a dye industry that we were interested in it. It was only because the dye industry was the post-graduate school of organic chemistry. I told him that there was no politics in it, that both Republicans and Democrats throughout the war had worked shoulder to shoulder. I told him that the Republican Ways and Means Committee had favorably reported on protecting the industry and had passed a temporary embargo and that the Finance Committee of the Senate and Mr. Longworth of the House and Senator Knox of the Senate had been our stalwart friends and that the only people who seemed to be against the industry were people whose motives would not bear the full light of day.

I asked him to become a director and asked him if, after six or eight months, when he had studied the subject, he would not then take over the burden from me and continue it as I had continued it while I was Alien Property Custodian.

I gave him all our literature and then I saw him again in New York at the Bar Association.

Q. 471. What did Colonel Miller say?

A. Colonel Miller agreed to become a director.

My impression is that he agreed to become president. I am not positive as to that. But he agreed to become a director and said he would study and look into the matter and let me know later as to how it developed. That was left to await developments and his getting more facts about it.

Q. 472. Was he actually elected a director?

A. He was.

Q. 473. Subsequently did you have another conversation with him with respect to this subject?

A. I did.

Q. 474. Will you state the time when, who was present and what was said?

A. Well, that was at the Bar Association.

Q. 475. In New York City you mean?

A. Yes. Mr. Corbett was present also at that conversation and that was along the same lines. I do not know whether that was before he was a director or not, but I know we had gathered together all our literature and we gave him everything. The conversation was along the same general lines. I cannot tell whether that was before he was a director or afterwards.

Q. 476. What literature was it that you say you gave him?

A. Our prospectus, that yellow book which we published.

Q. 477. Is this the book, a copy of that?

A. Yes, that is the book.

MR. KRESEL: Please mark this for identification.

Marked "Defendant's Exhibit O for Identification 7/3/23."

Q. 478. What else do you recall that you gave him?

A. I could not tell what else; whatever we had gotten out prior to that date. I could not tell you.

Q. 479. You cannot identify any more than that now?

A. No.

Q. 480. When was it that Colonel Miller informed you that he could not serve?

A. I could not tell.

Q. 481. How long after this talk?

A. I could not tell you how long after it was. I know we put his name on the door and it was some time after.

Q. 482. What door?

A. On the door of The Chemical Foundation. I think he notified us by letter.

Q. 483. About what?

A. About his resignation, that he could not serve. I may be mistaken.

Q. 484. I want to ask you, Mr. Garvan, whether any of the patents that were assigned by the Alien Property Custodian to the Chemical Foundation were so assigned at the request of any department of the Government?

A. Yes, sir.

Q. 485. Will you please now state what patents assigned by the Alien Property Custodian to the Chemical Foundation were assigned at the request of any department of the Government, stating what department, what official of the department, describing the patents, what consideration was paid, and all about it?

MR. ANDERSON: Is it in writing?

MR. KRESEL: Yes, I have some writing I will put in.

MR. ANDERSON: I would like to have it. If you are going into the assignments and the request for them, I think the writing is the best evidence of what took place.

MR. KRESEL: I will call attention to it. The assignments are already in evidence.

THE COURT: Do you mean what patents were assigned to the defendant at the request of various departments?

MR. KRESEL: That is right.

THE COURT: Are those requests in writing?

MR. KRESEL: No; there is some correspondence, but very little, which I will put in. The requests were not in writing.

Q. 486. Mr. Garvan, I direct your attention first, in connection with this question that I have put to you, to the assignment attached to the Bill of Complaint and marked Exhibit H-3, which you will find at page 423 of the Bill. (Handing witness book.)

MR. KRESEL: That has been put in evidence, and it is Plaintiff's Exhibit No. 118.

Q. 486. (Continued.) Please state how that assignment to the Chemical Foundation came to be made.

A. That was made at the request of the Navy. Those gyroscopes are for use on battleships and all ships, particularly for their compasses, and Captain Norton or Commander Norton, I am not sure of his rank at that time, came to me and asked to have those assigned to the Foundation and had the Foundation then issue them a license.

Q. 487. How many of those patents are there?

A. Some fourteen, I think. Yes, fourteen.

Q. 488. How much did the Chemical Foundation pay to the Alien Property Custodian for that assignment?

A. $500.

Q. 489. Did the Chemical Foundation take this assignment and thereafter issue a license to the Government?

A. It did.

THE COURT: Your license, I suppose, is in evidence.

MR. KRESEL: The license is in evidence, your Honor. That is the big license of November——

THE COURT: Oh, the license was subsequent to this assignment, I see.

MR. KRESEL: Subsequent to this assignment, of course.

Q. 490. While we are on that, Mr. Garvan, will you state whether the Government paid anything to the Chemical Foundation for this license?

A. It did not.

Q. 491. Now I direct your attention to an assignment which is marked Exhibit H-13 attached to the Bill of Complaint, at page 447, being Plaintiff's Exhibit No. 128, and ask you to state the circumstances as to those 160 patents that are covered by that assignment.

MR. ANDERSON: I wish to note an objection, first that the question is too general and indefinite, second that the circumstances under which the assignments were made cannot affect the rights of the parties under the assignment, which is in writing and speaks for itself and merges all the conditions precedent in it.

THE COURT: The question of good faith is involved, I take it, and I will admit the circumstances under which it was made.

MR. ANDERSON: Then I would ask, if your Honor please, reserving my objection, that the witness state specifically who had these negotiations with them, when, what was his position, what was said, and not the general circumstances.

THE COURT: Including the time, place, persons present, the names of the persons making the request, and their official connection with the Government. The objection with respect to the generality of the question I will need to have the

question read in order to determine. (Q. 491 read as recorded.)

If the witness goes afield, you may stop him. You may take the answer.

A. A short time prior to the fifteenth day of May, 1920, the Navy requested me to assign——

MR. ANDERSON: I object, sir.

A. (Continued.) ——or, Captain Norton representing the Navy. Captain Norton was the man who always represented the Navy with us in these assignments, and he came to me and asked me to assign those to the Chemical Foundation.

By MR. ANDERSON:

Q. 492. What was Captain Norton?

A. He was a Commander. I think he had charge of the Patent Division of the Navy. At any rate, he represented the Navy in its dealings on patents with the Alien Property Custodian.

Q. 493. He is dead now, is he not?

A. I was so informed.

MR. KRESEL: Well, we did not kill him, you know.

MR. ANDERSON: I did not suggest that you did.

MR. KRESEL: I do not see the reason for making such a remark.

MR. ANDERSON: I asked if he was dead as bearing upon the admissibility of his evidence. I did not suggest you killed him.

THE COURT: You may proceed.

By MR. KRESEL:

Q. 494. Go on, Mr. Garvan?

A. Those 160 were then assigned as contained in the assignment.

Q. 495. How much did the Chemical Foundation pay the Government for that assignment?

MR. ANDERSON: I object to this preliminary evidence now on the ground that the agent who conducted the transaction is dead.

THE COURT: I think the objection is not well taken. Have you any authority to support that objection, Colonel Anderson?

MR. ANDERSON: No, sir.

THE COURT: The objection is overruled and the answer will be taken.

Q. 495. (Continued.) Will you give the answer?

A. $5,000.

Q. 496. And did the Foundation thereafter give to the Navy Department of the Government a free license on these patents?

MR. ANDERSON: I object on the ground that the question of what is in a license is a question of the construction of a written instrument, and that the only evidence of that is the instrument itself.

MR. KRESEL: And it is in evidence.

MR. ANDERSON: I object to the construction of it.

THE COURT: The objection is sustained.

MR. KRESEL: The instrument will speak for itself, your Honor.

Q. 497. How much, if anything, has the Chemical Foundation received as income on these 160 patents which you have testified were taken over at the request of the Navy Department and for which the Foundation paid the Government $5,000?

A. $100.

Q. 498. I direct your attention to assignment which is marked Exhibit H-19, Plaintiff's Exhibit No. 134, page 467 of the Bill, and ask you to state whether you had any talk with Commander Norton of the Navy Department with reference to that assignment?

A. Yes, sir, to the best of my recollection.

Q. 499. And what was the conversation, giving as near as you can recall, the date when?

A. Some time shortly prior to the nineteenth day of February, 1921, when he again came to me and told me that they had discovered further patents that they would like to have transferred to the Foundation, so that the Government could get a license from them.

Q. 500. And how much did the Chemical Foundation pay the Government for that assignment?

MR. ANDERSON: I do not suppose that you mean to ask how much you paid the Government; how much you paid the Alien Property Custodian, I presume.

Q. 500. (Continued.) All right; paid the Alien Property Custodian.

MR. KRESEL: I will accept that correction.

A. $5,000.

Q. 501. And how much, if anything, has the Chemical Foundation collected as income on any of the patents covered by this assignment of February 19, 1921?

A. One license fee of $100.

MR. KRESEL: I now offer in evidence Article 167 of the Income Tax Regulations, and this time I produce the official print entitled "Treasury Department, United States Internal Revenue, Regulations 62, 1922 Edition, relating to the Income Tax and War Profits and Excess Profits, Taxes," and so on. I ask to read in Article 167, which appears at page 77 of this publication. I read as follows. It is entitled "Depreciation of patent or copyright."

"In computing a depreciation allowance in the case of a patent or copyright, the capital sum to be replaced is the cost (not already deducted as current expense) of the patent or copyright or its fair market value as of March 1, 1913, if acquired prior thereto. The allowance should be

computed by an apportionment of the cost of the patent or copyright or of its fair market value as of March 1, 1913, over the life of the patent or copyright since its grant or since its acquisition by the taxpayer or since March 1, 1913, as the case may be. If the patent or copyright was acquired from the Government, its cost consists of the various Government fees, cost of drawings, experimental models, attorneys' fees, etc., actually paid."

MR. ANDERSON: I have not seen that paper before being read, and I wish to make a formal motion to strike out on the ground that it is in no way binding upon this Court and is not evidence in this Court. The question of arriving at the value of patents in this case is a question solely for this Court.

THE COURT: It may be taken under our general rule.

MR. KRESEL: I offer in evidence a letter from the Alien Property Custodian, January 14, 1921, directed to the Navy Department, attention of Commander A. L. Norton.

Received in evidence and marked "Defendant's Exhibit No. 131." (*See Exhibits, Vol. V, page 2734.*)

MR. KRESEL: I offer in evidence a letter from the Navy Department, signed by Charles B. McVay, Jr., Rear-Admiral, United States Navy, to the Chemical Foundation, dated January 19, 1921.

Received in evidence and marked "Defendant's Exhibit No. 132." (*See Exhibits, Vol. V, page 2735.*)

MR. KRESEL: I offer in evidence a letter dated January 20, 1921, from the Chemical Foundation to Rear Admiral Charles B. McVay, Jr., of the Navy Department.

Received in evidence and marked "Defend-

ant's Exhibit No. 133." (*See Exhibits, Vol. V, page 2736.*)

THE COURT: Is that all of that group?

MR. KRESEL: All of this group.

THE COURT: They are admitted.

MR. KRESEL: I shall not stop to read these three letters, your Honor. They all refer to one of these assignments that Mr. Garvan has testified about, to wit, the 160 patents, and the Navy requests that the Chemical Foundation grant a license, and the Chemical Foundation says it would do so.

I now offer in evidence with reference to the gyroscope patents, those fourteen that the witness has testified followed, a letter from Josephus Daniels, Secretary of the Navy, to the Chemical Foundation, dated December 4, 1919.

Received in evidence and marked "Defendant's Exhibit No. 134." (*See Exhibits, Vol. V, page 2736.*)

MR. KRESEL: I desire to read that letter. It is short, your Honor. (Reads letter.)

I now offer in evidence the answer to this letter by the Chemical Foundation, dated December 8, 1919.

Received in evidence and marked "Defendant's Exhibit No. 135." (*See Exhibits, Vol. V, page 2737.*)

MR. KRESEL: I now offer in evidence the following additional correspondence with reference to the same subject, to wit.: Letter from Charles B. McVay, Jr., Bureau of Ordnance, Chief of that Bureau, of the Navy Department, to the Chemical Foundation, dated July 2nd, 1920; letter from the Chemical Foundation to the Navy Department, dated July 9, 1920; letter from Charles B. McVay, Jr., Rear Admiral of the United States

Navy, to The Chemical Foundation, dated July 15th, 1920; and letter from The Chemical Foundation to the Navy Department, dated July 19th, 1920.

THE COURT: Each is admitted.

Received in evidence and marked respectively, "Defendant's Exhibits Nos. 136, 137, 138 and 139." (*See Exhibits, Vol. V, pages 2738, 2740, 2741, 2742.*)

MR. KRESEL: I desire to read, if your Honor please, certain portions of testimony by Mr. Garvan before the Committees of Congress in connection with certain portions that have been read in by Colonel Anderson.

MR. ANDERSON: To which I wish to note an objection, if the Court please, on the ground that the admission of statements formerly made by a witness who is an officer of or represents a corporation, or himself is a party, are admissible without calling the witness, as admissions against his position in this case. Not necessarily admissions against interest when made, but admissions against his position in this case, as taken under the pleadings.

I do not know of any rule of law or evidence, though my knowledge is limited, that permits the reading into the record of evidence of a party, of an officer of a corporation which is a party or representative of a party, made on a former occasion, as testimony in this case. The witness is on the witness stand and he can testify to anything he pleases—that is anything he knows.

THE COURT: Mr. Kresel, what is the purpose of it?

MR. KRESEL: The purpose is, your Honor, to show that the disconnected portion of testimony read in by Colonel Anderson, made by Mr. Garvan—and I say that without criticism of the

Colonel—even going to the extent of reading a portion of a paragraph and not the entire paragraph, is not a full and a fair reflection of the statement of the witness. I am offering this under the familiar rule that where one party to a proceeding offers in evidence a portion of an instrument or a portion of a proceeding, the other party has the right to offer the balance of it. I do not propose to read Mr. Garvan's whole testimony, I propose to read only such portions as are relevant to the matter that was read in by Colonel Anderson.

THE COURT: If your purpose is to use the testimony given by this witness before the Congressional Committee as primary evidence in this case, there is no doubt in my mind at the moment but what Colonel Anderson's objection is well taken. The purpose of my inquiry was to ascertain whether that was your purpose or whether it was your purpose to negative the effect of a partial reading of that testimony; that is, whether it is your contention the paragraphs, portions or sentences which you now intend to read are in negation or modification of that which was read by the Government.

MR. KRESEL: The latter is my purpose, your Honor.

THE COURT: Objection overruled.

We will take a recess until 1 o'clock Standard Time.

AFTER RECESS.

MR. KRESEL: I read from page 244 of the Hearings before the Committee on Ways and Means; Question by Mr. Moore:

"MR. MOORE: Having put these things in the record, I thought you probably would care to make

a statement, because you are familiar with what has been said and done. If you care to make a statement, I will not interrupt you

"MR. GARVAN: I thought Mr. Choate had covered our purpose very well; but I can, in addition, just state this:

"The foundation of the Chemical Foundation was an effort to form an organization to represent as nearly as posible at that time the public interests. Judge Ingraham, of New York, and Judge Gray, of Delaware, had charge of drawing our charter and our trust agreement, and our certificate of incorporation. We have endeavored to make it as nearly a public institution as our laws allow, and at the same time have it an official organization. We wanted to sell these patents to the Government, and if there had been any method by which we could make them a working force, and still have them owned and controlled by the Government, it would have relieved us from a great deal of responsibility, and if there is at this time, any suggestion for modification or amendment of our plan which will insure in the minds of the committee a more definite and certain fulfillment of the intention and purpose of our organization, I am certain that the Chemical Foundation and all its stockholders and all who are interested in it, would be glad to conform to the wishes of the committee, because, in so far as we have the public recognition and public support, and Government recognition and Government support, we become more efficient and become more able to cary out the intentions which are in our hearts and minds."

Question by Mr. Kitchin. It will be conceded that was Congressman Kitchin?

MR. ANDERSON: Yes.

MR. KRESEL: (Reading.)

"MR. KITCHIN: Suppose that the Government would think it wise to take over the Chemical Foundation and operate it; would your officers be willing to turn it over to the Government?

"MR. GARVAN: Provided anyone could draw a bill which promised in the opinion of this committee efficiency in carrying out the purposes of the organization, we will be very glad to do so. For a month or six weeks, Mr. Palmer and myself and Mr. Bradley Palmer and others sought in every way possible to find some way by which we could turn the idea over to the Government and make it efficient in the use and protection of the patents.

"MR. GREEN:" ——

MR. KRESEL: That is another Congressman.

MR. ANDERSON: Yes.

MR. KRESEL: "MR. GREEN: What do you mean by 'efficiency' in that connection?

"MR. GARVAN: I will explain that. The employees of the Agricultural Department, for instance, invent a number of processes every year. By the rules of the Department of Agriculture they are compelled to dedicate them to the public. The result is throwing them into the waste basket because an invention when it is first patented has not been developed to the point of commercial manufacture. Nobody is going to do that if it is owned by the Government."

I read from page 360 of the same proceedings:

"MR. GARVAN: I will agree to do this: If there is question about it I will agree to have the charter amended, and in the terms and under the suggestion which you may dictate, in any way which you think will safeguard that. We must, of course, do two or three things; we must consider cases of the patents like salvarsan, and we must consider cases where one has invested, say, on the

strength of his patents, two or three million dollars, and some man applies whose character shows his application to be nothing but an attempt to blackmail a man to buy him out, but if you can draw any proposition which will safeguard your contention, I promise you that within forty-eight hours the charter will be amended to contain your proposition. I would not have it thought for one moment that there is any intention on the part of those trustees or those officers ever to put themselves in a position where they could be seeking or attempting to use any arbitrary power. I can do no more."

Q. 502. Mr. Garvan, I direct your attention to a statement read in by Colonel Anderson at pages 272 and 273 of these hearings before the Ways and Means Committee. You were being asked there about the Executive order which had been signed by Mr. Polk, the one of February 26, 1919, and the question asked by Mr. Moore was:

"Do you know who drafted that Executive order signed by Frank L. Polk?

"MR. GARVAN: I can give you my best belief, based upon the course of business in the office, that it was drafted by Mr. Mitchell Palmer after consultation with Mr. Bradley Palmer and, undoubtedly, after consultation with Mr. Hoguet, who was the principal adviser on patents."

Then after two or three more questions and answers, you said this:

"Of the Chemical Foundation, Inc., yes. And, furthermore, I think you will find that order received the consulting advice of every big patent lawyer in the country representing these big manufacturers."

I want to ask you what you meant by that statement as to the order having received the

consulting advice of every big patent lawyer in the country representing these big manufacturers.

MR. ANDERSON: I object.

THE COURT: I do not understand. Is it ambiguous—the statement?

MR. KRESEL: The statement is not only ambiguous, your Honor, ambiguous as to who the big patent lawyers were, but who the big manufacturers were that they represented, what time it was when they gave their advice. As to all of those I would like to have Mr. Garvan state what the fact was and what he was talking about here when he gave that answer. I think he has a right to explain that.

THE COURT: You may ask him if you desire the time and circumstances under which it was done. But what he meant by that statement I do not think is——

MR. KRESEL: I will reframe the question, your Honor.

Q. 503. I will ask you, Mr. Garvan, to state the names of the patent lawyers that you mentioned here, where you say "every big patent lawyer in the country," and the circumstances under which that order received, as you say, the consulting advice of such lawyers?

MR. ANDERSON: To the first part of the question I have no objection, except the general objection. As to the second part, I object on the ground that of course the statement speaks for itself, that counsel cannot read the testimony into the record and then have him explain it by cross-examining his own witness.

MR. KRESEL: I am not reading it. You read it in. I am reading something that you read in.

MR. ANDERSON: All right. If that is true, I had overlooked that fact, that I read it in.

MR. KRESEL: Yes, you did.

THE COURT: You may take the answer.

A. Pennie, Davis & Marvin, Mr. Townsend, of whatever it is, Byrnes, Townsend and Brickenstein, some name like that, and Mr. Rogers of Chicago passed upon that when they advised the people who took out licenses, their clients, that the title based on this order was good.

Q. 504. Was this advice that you speak of as having been given by these patent lawyers with reference to the order given prior to the making of the order by Mr. Polk or thereafter, if you can state?

A. No, I know nothing of their having given any advice before. I gave there on the other page the people I thought had been consulted about the drawing of the order. What I meant was that these men had subsequently passed upon our title, which was based on the order, and on their advice these people had taken out licenses and gone ahead to manufacture.

MR. ANDERSON: I object to and move to strike out the last part of the answer as to what he meant.

THE COURT: Motion granted.

MR. KRESEL: Is it granted, your Honor?

THE COURT: The motion is granted. The answer was not responsive and he was volunteering some information which was really the information asked for by your original question. It is not responsive and may be stricken out.

MR. KRESEL: That part of the answer which was to the effect that the advice by these lawyers was given after the order was made—may that stand?

THE COURT: Yes. The motion did not go to that, I understand, Colonel Anderson, but to the last part.

MR. ANDERSON: I did not understand.

MR. KRESEL: My question is whether that part of Mr. Garvan's answer which is to the effect that the advice by these lawyers was given after the Executive order had been drawn could stand. The Court says he did not understand you directed your motion to that part of the question.

MR. ANDERSON: I did not direct that particular motion to that part of the question, but it is subject to my general objection.

MR. KRESEL: Yes, I understand it is subject to your objection, but you are not moving to strike that out?

MR. ANDERSON: Not on the grounds stated in that motion, no.

THE COURT: The portion of the answer with respect to which the motion is granted begins with the words "what I meant."

Q. 505. In what connection, Mr. Garvan, was the advice given by these patent lawyers representing the manufacturers that you mention in this answer that I read to you from the record?

A. In connection with their clients' taking out licenses based on our title.

Q. 506. I read to you, Mr. Garvan, one answer that was read in by Colonel Anderson at page 394 of the Hearings before the Committee on the judiciary. Speaking of licenses, you say:

"Our rates vary on different patents, of course; some licenses are only for one-half of one per cent. royalty or one per cent. royalty, but all are based on the idea of encouraging manufacturing. For instance, as I pointed out, our nitrate patents included a process of making nitrate from the air, which was another reason for getting those patents out of Government ownership. The possibility of developing Muscle Shoals is within those patents. The Muscle Shoals project could not go ahead without our nitrate pat-

ents. If those patents had been given back to Germany after the war, Muscle Shoals would be on your hands to a very great extent, for one of the large elements of value in those patents is the making of nitrates from the air, the so-called Haber process. Those were the patents the completion of which made the European war possible."

That was your statement. Now, do you know how many Government plants there are at Muscle Shoals?

A. I know there are at least two.

Q. 507. And do you know how they are designated?

A. Plant No. 1 and Plant No. 2.

Q. 508. As to which of the plants were you giving these answers that I have just read to you?

A. Plant No. 1.

MR. ANDERSON: Just a minute. I object. There is no reference to any particular plant; it is the Muscle Shoals project; and it is nothing but explaining or undertaking to explain an answer in evidence.

MR. KRESEL: I would say that the witness has a right to state, quite irrespective of his statement, even which of the plants he was referring to when he was giving this testimony. The statement is ambiguous as to that.

THE COURT: I do not see that the witness can change by his testimony the fact with regard to the Muscle Shoals plants. If the facts are that there was one which came under that process, or if there were two which came under that process, it seems to me that is a fact which is more or less discussed and made a part of the statement. I do not know that he can now explain the statement, because that is a past event. His statement

is made. If the facts are that there is only one Muscle Shoals plant which was operated in a way so that it required the Haber process, I do not see why that fact cannot be shown; but I do not see that the modification at this time of that statement is proper.

MR. KRESEL: I am not seeking to have it modified. I will ask the fact, your Honor.

THE COURT: Question withdrawn?

MR. KRESEL: Yes, I will withdraw the question, though it has been answered. I assume that both the question and answer, then, will go out.

(Q. 508 and answer repeated as above recorded.)

THE COURT: That question, I think, is objectionable, and I think the objection to it is to be sustained and the answer stricken out.

Q. 509. Do you know, Mr. Garvan, whether one or both or either of these plants at Muscle Shoals was constructed for production of nitrates by what is known as the Haber process?

MR. ANDERSON: Does he know of his own knowledge?

A. No.

MR. KRESEL: The answer is "No."

MR. ANDERSON: Then it is all right. I did not think he knew.

MR. KRESEL: I now offer in evidence a report prepared by the Nitrate Division, Ordnance Office, War Department, assisted by the Fixed Nitrogen Research Laboratory, Department of Agriculture, entitled "Report on the Fixation and Utilization of Nitrogen."

MR. ANDERSON: We will note an objection to that. I have not had a chance to examine it, but I note the objection, of course, that as to proof of

facts stated therein it is not a report required by law, or any high officer.

THE COURT: By whom was the report made, Mr. Kresel?

MR. KRESEL: This report was made by the Nitrate Division, Ordnance Office, War Department, assisted by the Fixed Nitrogen Research Laboratory of the Department of Agriculture. It is accompanied by a letter of transmittal dated March 29, 1922, from C. C. Williams, Major General, Chief of Ordnance to the Secretary of War. There is attached thereto a certificate reading as follows: (Reading.)

In the letter of transmittal by Major General Williams to the Secretary of War, the following statement is made (reading).

THE COURT: The objection is overruled. The document is admitted.

Received in evidence and marked "Defendant's Exhibit No. 140." (*Not printed.*)

MR. KRESEL: I will read from this report two or three paragraphs, your Honor. It is under the heading, "Nitrogen Fixation Activities of the United States Government," page 8 of this report (reading).

That is all, Mr. Garvan.

MR. ANDERSON: If your Honor please, I have not been able to look at the large number of statements of figures introduced here today and therefore I am compelled to ask leave to reserve cross-examination on those statements until I can look at them, because I have not seen them. They were not furnished until they were presented in Court. I understand counsel does not object. On the other part of the evidence, I will ask the witness a few questions.

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 509-a. Mr. Garvan, is that your signature to this letter?

A. Yes, sir.

MR. ANDERSON: I offer in evidence photostatic copy of the oath of office of Francis P. Garvan which the witness has just identified, as an attorney in the office of the Alien Property Custodian, showing the date of entrance on duty as November 12, 1917, and ask that it be identified as Plaintiff's Exhibit No. 609. Counsel agree that we put them in now instead of waiting for the rebuttal.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 609." (*See Exhibits, Vol. II, page 1446.*)

XQ. 510. Is this your signature, Mr. Garvan?

A. Yes.

MR. ANDERSON: I offer in evidence the oath of office of Francis P. Garvan as Alien Property Custodian just identified by the witness, sworn and subscribed to on the fourth day of March 1919, showing the date of entrance upon duty as March 4, 1919.

XQ. 511. You did enter upon and begin the discharge of your duties on that day, did you not?

A. I did.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 610." (*See Exhibits, Vol. II, page 1447.*)

XQ. 512. You continued to serve in the position of Alien Property Custodian for which you thus qualified from the 4th of March, 1919, until what date? I think you stated it, but I want to get it right.

A. I think it was the 12th of March.

XQ. 513. The 12th of March, 1921?

A. 1921, somewhere along in there. It was a few days after the 4th.

MR. ANDERSON: I offer in evidence minute of the Noon Conference of May 16, 1918, at which there were present: The Alien Property Custodian, Messrs. Horne, Bradley, Dunn, Garvan, Dreher and Ferry. I ask that the same be read in evidence as Plaintiff's Exhibit No. 611.

Received in evidence and marked "Plaintiff's Exhibit No. 611." (*See Exhibits, Vol. II, page 1448.*)

THE COURT: That is of what organization?

MR. ANDERSON: The Alien Property Custodian. I am going to identify it just as soon as it is handed to me after marking.

XQ. 514. You knew who the gentlemen named there as being present were, do you not?

A. I am not quite sure.

XQ. 515. Messrs. Horne——

A. Yes, sir.

XQ. 516. Bradley?

A. Yes, sir.

XQ. 517. Dunn?

A. Yes, sir.

XQ. 518. Garvan—that is yourself?

A. Yes, sir.

XQ. 519. Dreher and Ferry?

A. Yes, sir.

XQ. 520. They were all officers in the office of the Alien Property Custodian, were they not?

A. Yes, sir.

XQ. 521. This is dated May 16, 1918, and the Alien Property Custodian at that time was Mr. A. Mitchell Palmer?

A. Yes, sir.

XQ. 522. To the best of your knowledge and information that conference was held as shown by these minutes (handing witness)?

A. I had not seen it (examines paper). Yes, sir.

XQ. 523. Mr. Garvan, you were nominated for the position of Assistant Attorney General of the United States also, were you not?

A. Yes, sir.

MR. ANDERSON: The minute I need not take the time to read. It merely shows Mr. Garvan's appointment as head of the New York office of the Alien Property Custodian in charge of the Bureau of Investigation.

XQ. 524. At what date were you nominated for that position, do you recall?

A. I do not remember.

XQ. 525. About what date?

A. I beg your pardon?

XQ. 526. About what date?

A. I think it was about the time that Mr. Palmer's house was blown up. Now, that was I think the summer of 1919.

XQ. 527. The summer of 1919 or about that time?

A. Yes.

XQ. 528. In fact your nomination was confirmed by the Senate was it not?

A. Yes, sir.

XQ. 529. I do not believe you ever took the oath of office as Assistant Attorney General, did you?

A. No, sir. I worked on three or four special matters.

XQ. 530. You had an office in the Department of Justice, however?

A. Yes, sir.

XQ. 531. Were you really in charge of the Criminal Division?

A. No, in charge of the Bolshevism and the Packers decree and two or three other things of that kind.

XQ. 532. From about the summer of 1919 on to

March, 1920 you were connected with the Department of Justice, although you never took the oath of office as Assistant?

A. I did volunteer work there, yes. I did not get any salary. I could not serve under both.

XQ. 533. I am very glad you stated that, because I know it is a fact that you did not. Mr. Garvan, when did you agree to become President of the Chemical Foundation?

A. To the best of my recollection from anything that I can inform myself from, it was some time after February 16th. You put in a letter from Mr. Hoguet saying on February 16th they induced me to become a director.

MR. KRESEL: What year was this, please?

THE WITNESS: 1919.

XQ. 534. It was in 1919?

A. Yes, sir.

XQ. 535. I read to you from your testimony before the sub-committee of the Committee on the Judiciary in the United States Senate, in the hearings on the Senate Resolution 77 which has been referred to. You know what I mean, do you not?

A. Yes.

XQ. 536. You were asked by the Chairman—who I believe was Senator Shortridge, was it not?

A. Yes, sir.

XQ. 536. (continued) At page 392:

"THE CHAIRMAN. In order to fix it in the record, when did you become Alien Property Custodian?

"MR. GARVAN. March 4, 1919.

"THE CHAIRMAN. When was the sale made to the Chemical Foundation?

"MR. GARVAN. The order directing the sale was made February 26, 1919 and the sale was actually consummated April 10, 1919.

"THE CHAIRMAN. And you became the President of the Chemical Foundation when?

"MR. GARVAN. I was the President from the beginning. The date of the recordation of our certificate is the 19th of February, 1919. So that I was President of the Chemical Foundation at a time when I was a dollar-a-year man in the employ of the Government, but when I had no expectation of doing anything but step out and go back and devote myself to my private practice and thus build up, if possible, the chemical industry in this country."

You did testify to that, did you not?

A. Oh, yes, certainly.

XQ. 537. Does it correctly state the facts?

A. Well, it depends upon whether—I became President but I was not formally elected by the incorporators until March 8th. I had consented to become President of the corporation to be formed.

XQ. 538. It had been understood really throughout the transaction that you were to be President, had it not, Mr. Garvan?

A. Not until quite late in the transaction; it was not even suggested at first.

XQ. 539. How late, would you say, in the transaction? You say here from the first.

A. The only thing that I can recollect—that I can place it by is that it must have been after the 16th of February, because on that date Mr. Hoguet wrote to Mr. Palmer, "We have induced Mr. Garvan to become a director", and therefore at that time it had not been suggested that I become President.

XQ. 540. As a matter of fact, you know it was agreed around that time that you should be President of The Chemical Foundation?

A. Yes.

MR. KRESEL: Around what time?

MR. ANDERSON: Around the 15th of February.

A. Somewhere around that time. I would not be able to place the date.

XQ. 541. Now, Mr. Garvan, you continued, as I understood you to say, as President of The Chemical Foundation from the time of your original election down to the present time?

A. Yes, sir.

XQ. 542. This morning some evidence was introduced as to a certain Bill pending in Congress before the Ways and Means Committee of the House, and afterwards before the Senate, for a dye embargo, among other things?

A. Yes, sir.

XQ. 543. You took quite an active part as President of the Chemical Foundation in undertaking to secure a dye embargo, did you not?

A. Very active.

XQ. 544. You did?

A. Very active.

XQ. 545. You and the officers of The Chemical Foundation earnestly urged the adoption of a dye embargo?

A. We did.

XQ. 546. You were at that time Alien Property Custodian?

A. Yes, sir.

XQ. 547. You were at that time discharging duties in connection with the Attorney General's office such as you have described?

A. Yes, sir.

XQ.548. And had been confirmed by the Senate as Assistant Attorney General, but had not qualified for the position?

A. Yes, sir.

XQ. 549. Mr. Garvan, have you ever been in Germany?

A. Yes, sir.

XQ. 550. When?

A. I was there—now let me see—I think I have made two trips through Germany. In 1908 or 1909, along there.

XQ. 551. And those trips were about that same time?

A. One summer following another summer.

XQ. 552. You were over there as a——

A. Tourist.

XQ. 552. (continued)—tourist?

A. Pure and simple.

XQ. 553. Approximately how long were you in Germany?

A. Well, I suppose a month each time; possibly less.

XQ. 554. Then the information which you testified yesterday as being in your possession as to the educational system in Germany and the economic system of Germany and the organization of industry in Germany was all derived from other sources than any personal knowledge on your part, was it not?

A. Oh, yes.

XQ. 555. You spoke of the fact that the dye industry in Germany maintains schools for the education of the people in the conduct of that business. Do you not know as a fact that the United States Steel Corporation does the same thing in the United States?

A. I do not, no.

XQ. 556. You do not know that?

A. No.

XQ. 557. Do you not know as a fact that a great many industrial concerns in the United States, like Westinghouse and General Electric do maintain schools for the education of youths in their particular branches of business?

A. I do not know.

XQ. 558. You also spoke on yesterday of the fact

that Germany had a large fund for propaganda in the United States. In connection with your investigations, did you not find that England and France also had a large fund for propaganda in the United States?

A. I did not.

XQ. 559. You did not find that?

A. I did not.

XQ. 560. You know, as a matter of fact, that the United States had quite a large propaganda fund during the war, do you not?

A. You mean selling Liberty bonds?

XQ. 561. No, no, I mean for the maintenance of propaganda, publicity?

THE COURT: You mean in America?

MR. ANDERSON: Or in foreign countries as well.

A. I had no knowledge of any such thing. It never came within my labors.

XQ. 562. Never came within your knowledge?

A. No.

XQ. 563. I would like you to define a little more definitely for me, if you can, just what your duties were as Chief of the Bureau of Investigation through which position you got the information you described.

A. Yes. For the first two or three months it was what I would call absolutely clerical work. It was receiving this tremendous number of reports on property that poured in, arranging a system for the verification of the oaths and arranging a system of dividing them so that those that looked suspicious and those that fitted in with information that might come in, might be further investigated as well as those who reported no property and who we had reason to believe might have property; in other words, to sift those that were apparently all right from those that should require more investigation, and so forth. That was the first

thing that was done, to try and see what was to be done.

Then we wrote letters to everybody that we could think of in the country who might have any knowledge of German property; banks, trust companies, tax assessors, county agents, mortgage companies, everybody that touched money or property who might have any record of German ownership. That was our next step.

Then, of course, patriotic citizens sent in an enormous amount of information, and then we began to gather it from the seven or eight other information bureaus of the Government, Military Intelligence, Naval Intelligence, War Trade Board Intelligence, Secret Service of the State Department, Secret Service of the Treasury Department, the Department of Justice, and these National Defense organizations, everywhere that we could get information. Then we began to send out the individual men to the individual places to examine the individual suspected ones, and so forth. Then we found that most of this material was in New York City; so we established a New York office to be nearer the source.

XQ. 564. In your New York office, did you have charge of the examination of such concerns as the Kuttroff, Pickhardt & Company, the Cassella Color Company and the H. A. Metz Company and the Farbwerke-Hoechst Company that are referred to in Mr. Palmer's report?

A. Yes, sir.

XQ. 565. You had charge of that?

A. With the assistance of Mr. Choate.

XQ. 566. You were in charge of that work?

A. I was in charge.

XQ. 567. You were in constant charge of that work I assume?

A. Yes. Mr. Choate had the next room to me. There was just a door in between.

XQ. 568. I want to ask you about some of these concerns to clear up certain points, some of which you have mentioned like the Bayer Company. We will take the Bayer Company first. Do you recall when the investigation of the Bayer Company was made? You said it was on the 12th of December, 1918, if I recall?

A. My recollection is that that was quite early, that that was one of the first. I think that was the first one we appointed the directors in. I am not sure about that.

XQ. 569. The actual auction took place on the 12th of December, 1918, did it not?

A. Yes, sir.

XQ. 570. What was the proceeding after the auction, do you know? I mean, how long before the property was transferred. What did you do then?

A. The proceeding then would be for the price and purchaser to go before the Sales Committee which consisted of the five men who are now Trustees of the Foundation; and the Washington office would help clear the title and the lawyers for the purchasers would go down there and look over their necessary muniments of title; and then upon the approval of the Advisory Committee on Sales as to price and as to purchaser, the deed would be put through. Does that answer the question?

XQ. 571. That is pretty good. Now, do you know when the actual transfer of the property of the Bayer Company took place?

A. No, that I do not know. I could find out I suppose.

XQ. 572. After the sale, these various proceedings which you indicate usually took some little time, did they not?

A. Sometimes some time and sometimes not, more or less.

XQ. 573. In property the size of the Bayer Company, it would naturally take some weeks?

A. Well, there are just as nasty questions that come up with small companies as with large companies.

XQ. 574. If I were to show you the record that the old directors of the Alien Property Custodian did not resign until late in January, what would you say?

A. I would say that was pretty quick.

XQ. 575. You would say that was pretty quick for turning it over?

A. Yes, sir.

XQ. 576. Do you not know that as a matter of fact the terms of sale gave only thirty days to approve the sale to the purchaser?

A. I remember it now that you remind me.

XQ. 577. So that they had thirty days from the 12th of January to decide whether they would approve the purchase at all?

A. From the 12th of December.

XQ. 578. From the 12th of December to the 12th of January?

A. Yes.

XQ. 579. Thirty days?

A. Yes, and we could get an adjournment of that date.

XQ. 580. Then the turning over the property?

A. I think that had to be the turning over.

XQ. 581. They had thirty days in which to reject bids?

A. That is right. We had to decide if we were going to reject.

XQ. 582. Within thirty days?

A. Yes.

XQ. 583. Mr. Garvan, you are familiar with the provisions of the Trading with the Enemy Act that

gave to the Alien Property Custodian the power to reject any bid upon the Executive order of the President, stating the reasons therefor in writing and to re-sell the property?

A. Yes, sir.

XQ. 584. Did you as chief of the Bureau of Investigation ever suggest the rejection of the bid for the Bayer property?

A. For the Bayer property?

XQ. 585. Yes.

A. No.

XQ. 586. You testified on direct examination that you were greatly alarmed or concerned by the fact that one company——

A. (interposing). You misunderstood me. I was only alarmed at the fact that the directors bore German names. The moment I knew the personality of the men who bore German names, that they had been American citizens for a hundred years as far as that company was concerned——

XQ. 587. That is not quite the point I was getting at. But you were greatly alarmed at the prospect of one company controlling as many as 1200 patents?

A. No, that was not the thing that alarmed us. They were entitled to control those because they went with that plant.

XQ. 588. Well, I haven't your testimony in the record before me. I have not been able to go through it.

A. I was alarmed at the prospect or possibility of men with German tendencies going on and buying up them all. Of course, if we had known that they had been actual Germans, they never would have gotten that property.

XQ. 589. If there had been any reason for any uneasiness on your part as to the interests of the

country being protected, would you not have recommended to the President a rejection of the bid and a re-sale

A. Oh, certainly.

XQ. 590. And that could be done in any property?

A. That was only my first flash at the fact of their being German names.

XQ. 591. That could be done in any property?

A. Oh, yes.

XQ. 592. And that was sometimes done, was it not?

A. Oh, quite frequently.

XQ. 593. As a matter of fact, you knew at the time this sale was made or before it was actually consummated, that the purchaser, the Sterling Products Corporation, had an arrangement and understanding at the time of the sale with the Grasselli Chemical Company?

A. Yes, sir.

XQ. 594. That the Grasselli would buy its patents and part of its property?

A. One to take the dye side of the business with all its appurtenances, building, patents, etc., and the other to take the drug side with all its appurtenances.

XQ. 595. The drug side being chiefly aspirin?

A. Yes, sir.

XQ. 596. That was practically all they made, as far as you know

A. I do not know if it was all they made. I know that the chief product was aspirin.

XQ. 597. The dye side of that plant was sold to the Grasselli Chemical Company?

A. Grasselli Chemical Company.

XQ. 598. Do you know what they gave for it?

A. I do not know.

XQ. 599. Did they not have to disclose the ar-

rangement between them to the Alien Property Custodian?

A. I don't think they did. They were two splendid American concerns. What their business was was between themselves.

XQ. 600. Was the Sterling Products Company an old company?

A. Yes.

XQ. 601. Had they been in business long?

A. Yes, they made syrup of figs for fifty years.

XQ. 602. The Grasselli Company took over about 500 of those patents, did they not?

A. I don't know how many they took over.

XQ. 603. Dye patents?

A. I don't know.

XQ. 604. Any how they were to take the dye pattents?

A. They were to take the dye side of that business.

XQ. 605. And the price paid for that property was about $5,250,000, something like that, was it not?

A. It was.

XQ. 606. Mr. Garvan, did not Mr. Wigglesworth of the National Aniline Company go up and make an inspection of this property and report to you on it or state to you the result of his inspection?

A. I don't think Mr. Wigglesworth did. I think Mr. Matheson of his company was the only one I saw.

XQ. 607. Matheson was the only one you saw?

A. That I remember.

XQ. 608. Did Mr. Matheson ever tell you what he thought the physical property was worth, that is, the manufacturing plant?

A. He did not, because he was a prospective bidder. He did not tell me. He told me how much the patents were worth.

XQ. 609. Yes, you testified to that. Now, the

Farbwerke-Hoechst Company was what has been talked of here as one of the Metz Companies?

A. Yes.

XQ. 610. That was a New York Corporation?

A. Yes, sir.

XQ. 611. You had a very exhaustive audit and examination made of that property, did you not?

A. Very.

XQ. 612. Who paid for it, Mr. Garvan?

A. Mr. Metz.

XQ. 613. As a matter of fact, the Alien Property Custodian did not have any appropriation for the purpose of making these audits and investigations in advance of the seizure of properties, did he?

A. No, he did not.

XQ. 614. You always made their owner pay that?

A. Yes, I think we did.

XQ. 615 You charged that up to him and made him pay?

A. Well, if his books were straight, it did not cost much.

XQ. 616. I know, but in the case of Mr. Metz it cost $40,000?

A. Yes, that was because of the condition of his books, disguising the relations with Germany.

MR. ANDERSON: I do not want to move to strike out the witness's answer, your Honor. I said "It cost $40,000"? And he said "Yes." Now he goes on to explain. I know the witness does not want to embarrass me, and therefore I just want to ask him not to do that.

THE COURT: Let the non-responsive part of his answer be stricken out.

XQ. 617. That examination showed the earnings and profits of the Farbwerke-Hoechst Company for a period of five years, did it not?

A. I assume that to be true.

XQ. 618. It was a very exhaustive examination made by Wolfe & Company, was it not?

A. Very.

XQ. 619. That report was made to you, was it not?

A. Yes, sir.

XQ. 620. Did you familiarize yourself with the report?

A. I did at the time.

XQ. 621. According to the report of Mr. Palmer, which is in evidence, as is also this portion of it, filed as an exhibit with the answer I think it shows that the earnings of that business were very large.

MR. KRESEL: Which business?

MR. ANDERSON: Of the Farbwerke-Hoechst or Metz Company.

MR. KRESEL: I doubt whether there is anything in the report about that.

MR. ANDERSON: I think it shows that. I can not remember all of them.

XQ. 621. (Continued.) Anyhow whatever the earnings were, they were shown by that report, were they not?

A. Undoubtedly. He made up a whole new set of books and set of everything.

XQ. 622. Take the Badische Company. Who represented that in New York—in America?

A. Kuttroff, Pickardt & Company. You do not mean the lawyers?

XQ. 623. No, the agents.

A. Kuttroff, Pickardt & Company.

XQ. 624. They had been for a number of years the representatives of the Badische Compony, had they not?

A. They had.

XQ. 625. You had a very exhaustive examination made of their records and ther accounts?

A. Very.

XQ. 626. They did not have any plant in the United States, did they?

A. No, an assembling and mixing plant; down on Broadway, a warehouse.

XQ. 627. Just a warehouse?

A. Yes.

XQ. 628. They were merely distributing agents in the United States, and importers?

A. Yes, sir.

XQ. 629. That is all?

A. Yes, sir.

XQ. 630. They exported to a large extent dyestuffs, did they not?

A. Yes, sir, mainly, I think.

XQ. 631. Mr. Palmer in his report states that the company had been selling for the German house for years high grade indanthrene dyes which it received from the German house at fixed prices and he did not include the sums described as royalties. Their business was largely in that class of dyes as I understand it, like indanthrene dyes?

A. I think a general business.

XQ. 632. They handled all the Badische business in this country?

A. Yes, they had a full line.

XQ. 633. They were very large importers of dyestuffs?

A. Oh yes.

XQ. 634. Do you know whether they were largely patented dyes, or can you say?

A. Not a great proportion of them were patented, probably. The indigo is the largest, and then sulphur colors, and they were not patented.

XQ. 635. They were at that time, were they not?

A. No.

XQ. 636. The indigo had expired?

A. I think the indigo had expired, but I would not be certain of that.

XQ. 637. Had the indanthrene patents expired?

A. No.

XQ. 638. They were still in existence?

A. They were, I think. I know they were.

XQ. 639. As a matter of fact, they were assigned to the Chemical Foundation?

A. Yes.

XQ. 640. And you have licensed them today?

A. Yes.

XQ. 641. Did not the reports in that instance show there were very large earnings which in fact had been charged up, whether rightly or wrongly, to royalties?

A. I would have to refer to that report.

XQ. 642. I refresh your memory by reading from Mr. Palmer's report: "During the years 1915 and 1916 the sum of $701,944.34 was credited on the books of the German house and subsequently remitted under the head of indanthrene royalties." As far as you know that was true, was it not?

A. I do not think it was true. I think it was the means of getting the profits of this concern back——

XQ. 643. Well, I mean it was credited.

MR. KRESEL: The witness had not finished his answer.

XQ. 644. All right, but you do think it was true, as a way of getting the money back to Germany?

A. Yes, sir.

XQ. 645. But the statement that it was credited to indanthrene royalties on the books is a correct statement in Mr. Palmer's report, is it not?

A. If it is in Mr. Palmer's report, it is correct.

XQ. 646. You believe everything that is stated in that report as true, don't you?

A. I think everything is correctly stated.

XQ. 647. "In like manner, in 1914, the sum of $477,100 was credited and remitted ostensibly as a return of advances made years before by the German house for expenses of the New York concern." Do you recall that element

A. I remember that those charges were made there on the books, sending all the earnings of the New York house back to Germany, and were urged by us as a demonstration that this was a part of the Home Office and not an independent American concern.

XQ. 648. I am not questioning that that was the fact at all. All I am trying to get at is that these figures did show on the books, as you had them investigated, as part of the profits of the business?

A. In one place on the books. Whether the rest of the books contradicted it or not I do not know. The whole of the statement of Kuttroff, Pickardt & Company is published in full in one of those hearings.

XQ. 649. The report also shows there were very large profits on importations in the Deutschland?

A. The submarine, yes.

XQ. 650. All of that report was made to you, was it not?

A. Yes, sir.

XQ. 651. And by you transmitted to Mr. Palmer?

A. Yes, sir.

XQ. 652. The report on the Cassella Color Company was also made to you, was it?

A. Yes, sir.

XQ. 653. The report in the Roessler & Hasslacher Company and subsidiaries?

A. Made to Mr. Choate.

XQ. 654. I mean you were the Chief of that division?

A. Yes. I mean I did not pay the close personal attention to that one that I did the other three. But I did go over it, of course.

MR. KRESEL: May I say that I am told the Roessler and Hasslacher concern is not a dye concern?

XQ. 655. I know it is not a dye concern, but it is one of the concerns mentioned in Mr. Palmer's report here, that is what I am getting at.

A. Yes.

XQ. 656. Do you know what became of their patents?

A. Why, I think—no, I do not.

XQ. 657. The Hasslacher concern had plants in this country, did it not?

A. Yes.

XQ. 658. And you do not know what became of their patents?

A. No, I do not.

XQ. 659. Merck & Company. There was a report made on Merck & Company to you?

A. Yes, sir.

XQ. 660. Was the property of Merck & Company ever sold, do you know?

A. I think it was.

XQ. 661. Do you know what became of the patents?

A. I do not think they had many patents. I don't know.

XQ. 662. The Kalle Color & Chemical Company—I supose that is it, though I do not know how to pronounce these names——

A. Yes, that is right.

XQ. 663. Do you recall that one?

A. Yes, sir.

XQ. 664. According to the figures which I have before me, which I will ask you if you recall, this company paid royalties amounting to $16,750 a year for three and a half years, aggregating $58,625, for the use of certain German patents. Do you recall that?

MR. KRESEL: Paid to whom, Colonel?

MR. ANDERSON: Paid to the German owners of these patents.

A. No, I do not recall that. Before the war, you mean?

XQ. 665. Yes.

A. No, I do not.

XQ. 666. You do not recall it?

A. No, sir.

XQ. 667. And that they showed earnings of something like 200 per cent. in 1915 and 1916 on a $300,000 capital; do you recall that?

A. On imports?

XQ. 668. No, on their business.

A. They were solely imports.

XQ. 669. No, they had property in this country?

A. I do not know.

XQ. 670. Do you know what became of those patents?

A. The Kalle patents? I think they were with us. I am not positive.

XQ. 671. You think they were assigned to you?

A. I think so.

XQ. 672. To sum the matter up, as I understand it, you as Chief of the Bureau of Investigation, where you felt there was doubt as to the ownership of a property or the stock therein or an interest therein, would have a careful investigation made of that property?

A. I would have to have more than doubt. I would have to have something to go on when I went into a man's place.

XQ. 673. Then you would have an audit made to show the status of his books, his reports, and the conditions of his business. Is that true?

A. Not always. Sometimes I would go over the

books myself—sometimes I would go through them myself.

XQ. 674. But you would satisfy yourself as to the situation?

A. Certainly.

XQ. 675. And where you thought there was any German interest, or before you seized a property, you would make a careful audit and investigation, isn't that true?

A. Where they denied German ownership, as they did in this case.

XQ. 676. Speaking not only of that particular period, but later as Alien Property Custodian, when you handled the whole matter, in the event that property was seized, before you sold it, a complete audit for five years was made, was it not?

A. It was in some cases generally, before we sold it.

XQ. 677. Yes?

A. Oh, yes, a complete audit was made.

XQ. 678. A complete audit for five years was made?

A. Yes, sir.

XQ. 679. And then you also had an appraisal of the property made?

A. Yes, sir.

XQ. 680. And then you got out a prospectus showing the results of the audit for five years, and the values of the appraisals, would you not?

A. Yes, sir; that is, we would have an appraisal of physical property.

XQ. 681. Did you not have an appraisal of the whole property?

A. We could not appraise intangibles. We would have one of those appraisal companies go through a factory or anything of that kind.

XQ. 682. Would you not appraise good-will as one of the items of the business?

A. I do not think we ever appraised good-will.

XQ. 683. Would you not appraise the going concern value?

A. The what?

XQ. 684. The going concern value?

A. I do not think we did. I am not sure. I think it was a physical appraisal.

XQ. 685. You think it was just a physical appraisal?

A. I think so, with the balance sheet showing the profits.

XQ. 686. What was the reason for showing the profits for five years if you do not want to show the going concern value?

A. Then the purchaser could make up his own mind as to the good-will.

XQ. 687. You haven't any of those appraisals with you, have you?

A. I have got them with me. I haven't got them all. Oh, no—the appraisals.

MR. KRESEL: We have got the prospectus.

A. (continued) The prospectuses we have.

MR. KRESEL: Here is one, Colonel. (Handing paper.)

XQ. 688. Now take the Cassella Color Company. You seized the patents in that case, did you not, or rather, the Alien Property Custodian seized them?

A. Yes, sir.

XQ. 689. What became of them?

A. They were sold to us.

XQ. 690. They were sold to you?

A. Yes, sir.

XQ. 691. Did you have a full report made on that company before their patents were seized?

A. The company was gone.

XQ. 692. It was?

A. Yes there was nothing left but the signs.

XQ. 693. But you seized the patents?

A. Yes, sir.

XQ. 694. And sold them to The Chemical Foundation?

A. Yes, sir.

XQ. 695. At page 100 of the Answer, from Mr. Palmer's report, I read the following, speaking of the enactment of the amendment of November 4th to the Trading with the Enemy Act:

> "Until the enactment of this amendment it had not been possible to take over German patents. These patents, as had been already indicated formed a collossal obstacle to the development of the American dyestuff industry."

Mr. Garvan, do you agree to that statement that they formed a colossal obstacle in the development of the dyestuffs industry?

A. Certainly.

XQ. 696. What proportion of the dye business in the United States did those patents cover?

A. Between four and five per cent.

XQ. 697. Was it an essential portion of the business?

A. The essential portion.

XQ. 698. It was the essential portion of the business?

A. Yes, sir, if you mean the complete dye industry.

XQ. 699. It furnished the key to the business, did it?

A. Well, if you are not able to furnish the whole line, you won't very shortly be allowed to furnish any.

XQ. 700. Now hold on. I know you do not want to argue with me.

A. No, no.

XQ. 701. You want to answer. I asked you if the patent-controlled dyestuffs furnished the key to the business.

A. I would like to ask you what you mean by "furnished the key to the business."

XQ. 702. Then we will leave it right there. Your answer is all right. Now, at the time that these patents were taken over, as you described on yesterday, that is, the patents now sold to The Chemical Foundation, you were familiar with the system of the Federal Trade Commission of licensing patents, were you not?

A. Fairly so.

XQ. 703. You knew that a considerable number of these patents had been licensed by the Federal Trade Commission under Section 10, did you not?

A. Yes, sir.

XQ. 704. You knew that the Federal Trade Commission issued licenses to all substantial manufacturers in the country that desired to use those patents, did you not?

A. Yes, sir.

XQ. 705. You knew that their license fee was a flat royalty of 5 per cent. on gross sales, and afterwards had been changed in some instances to 2 per cent., did you not, in a general way?

A. In a general way. I did not know exactly whether that was always their fee.

XQ. 706. And you were familiar with the provisions of the Trading with the Enemy Act with respect to the power of the Courts of the United States to deal with these licenses after the war, were you not?

A. Yes, sir.

XQ. 707. Had you ever heard it suggested that any American manufacturer could not get a license

from the Federal Trade Commission to use any alien-owned patent in the United States?

A. I had not.

XQ. 708. After you became Alien Property Custodian and seized German patents, did you not grant licenses yourself to certain persons in the United States to manufacture or use them?

A. The Government. I do not remember any other cases.

XQ. 709. Did you not grant licenses to some manufacturers?

A. I have no recollection of it. I would have to be refreshed on that.

XQ. 710. But did you have any doubt as to your power to grant licenses when you had seized the patent, just as much to a manufacturer as you could to the Government?

A. I do not think I did. I do not remember that that question came up at that time.

XQ. 711. Mr. Palmer testified that the Federal Trade Commission desired to continue licenses under these patents after they were seized by him, and he objected on the ground that he was then the owner of the patent. Do you recall that testimony?

A. I was not in the room all the time.

XQ. 712. Did you ever discuss that matter with Mr. Palmer at all before or after you became Alien Property Custodian?

A. No, I do not think so.

XQ. 713. Mr. Garvan, do you know of any obstacle that existed to any manufacturer in the United States obtaining a license on reasonable terms to use alien-owned patents during the war, through the Federal Trade Commission or otherwise?

A. Any obstacle?

XQ. 716. Any obstacle to their obtaining it?

A. To their obtaining it?

XQ. 717. Obtaining the licenses.

A. No.

XQ. 718. None whatever?

A. No.

XQ. 719. Mr. Garvan, I read into the record the other day from the Hearings before the Finance Committee of the Senate on Bill H. R. 8078, pamphlet entitled "Dyestuffs," with which you are familiar, I know.

A. Yes.

XQ. 720. At page 520 after reciting the sale of the Bayer Company and the incidents connected with that sale, you said, speaking of prospective purchasers or possible purchasers of these patents if they were sold:

> "They could go ahead and buy these other patents for very little and have a monopoly for sure, and then they could just sit back and collect a royalty from the Germans after the war. They did not have to manufacture anything; they did not have to go into business."

That would apply only to the product patents, would it not? In other words, royalties at the port can only be collected on product patents; isn't that true?

A. They could be collected on process patents if we could prove the process; but you can not prove the process.

XQ. 721. Then you go on to say:

> "So I conceived the idea of forming the Chemical Foundation and putting all these patents into a quasipublic corporation, which would develop them and give them to chemical companies throughout the country. The way the salvarsan had worked out encouraged us. Mr. Metz was in fear of a monopoly here, he was not afraid of I. G. in Germany. The best answer is the Chemical Foundation. We have licensed six people

to make salvarsan. Mr. Metz is the most successful one. We have given it to Squibbs, and three, I think, altogether."

Now I am a little curious to know who did conceive the idea of The Chemical Foundation. Were you right in that statement or not?

A. I think as it exists now, as to the form of the company, I think I am to blame.

XQ. 722. You claim to be the parent?

A. I do not claim. Mr. Palmer told me to go ahead and set up a scheme which would accomplish what he wanted to accomplish, and between Mr. Choate and myself we worked it out. He says I am to blame.

MR. KRESEL: I did not get that last. He says what?

THE WITNESS: He says I am the one that originally thought of it.

XQ. 723. Who says that?

A. Mr. Choate. But between us it was worked out under Mr. Palmer's direction.

XQ. 724. You, then, are the person who conceived the Chemical Foundation, the defendant here, as we have it?

A. Well, I have explained it. You can——

XQ. 725. I want the answer.

A. The way it happened was that Mr. Palmer told us to get up some plan——

XQ. 726. Hold on; would you mind just answering

A. You can answer it the way—you can say "the scheme of The Chemical Foundation." I invented the name "Chemical Foundation." Mr. Palmer directed Mr. Choate and me to work on the idea.

XQ. 727. Put it this way, then: "So I conceived the idea of forming the Chemical Foundation." Did you conceive it or did somebody else conceive it?

A. Well, I have told you the way it was. I will admit I conceived it, if you will allow the circumstances under which it happened.

XQ. 728. All right. Mr. Garvan, about what time did this idea develop in your mind?

A. You will have to tell me, Colonel, what you mean by "this idea."

XQ. 729. I mean when did it become a definite idea in your mind?

A. The first conversation about it was one or two days after the Bayer sale, between myself and Mr. Palmer. From that time it was an evolution until the time it took its final, present form.

XQ. 730. Your first conversation, you say, was between you and Mr. Palmer. Whom else did you talk to about it?

A. Mr. Choate, Mr. Hoguet, each and every one in the industry that I met from day to day.

XQ. 731. Can you not name some of them?

A. Yes, Mr. Poucher; I know Mr. Wigglesworth, Mr. Merz, Mr. Jeffcott.

XQ. 732. Who was Mr. Jeffcott?

A. Jeffcott was the Calco.

XQ. 733. Calco Chemical Company?

A. Yes. Merz of Heller & Merz.

XQ. 734. What were Mr. Poucher's connections at that time?

A. Poucher was with the duPont Company.

XQ. 735. Yes?

A. Mr. Matheson.

XQ. 736. Whom was he representing?

A. I think we talked it over with Metz. Metz was in and out all the time. Any one of them that was around in New York or that was available. Mr. Cashman of the Grasselli. I do not know who else. Mr. Howard, I think, of the Merrimac, was quite active.

XQ. 737. When did these conversations with the

gentlemen you mention, that you speak of as the industry, begin, and about when did they take place? I know you can not state the exact date, but as near as you can locate it?

A. I would assume not many of them took place before Christmas. That was December 12th, and I went down to Washington shortly after that, and by the time I got back was probably the 20th. So I assume it was not much before Christmas.

XQ. 738. Then that was during January?

A. I would say yes.

XQ. 739. These conversations were going on in regard to the organization of a company to take over all German dye and chemical patents; is that the idea?

A. Yes.

XQ. 740. That was the general idea, to take them all over?

A. Yes.

XQ. 741. Were you present at the conference in Washington on the 27th of January, 1919?

A. I was not.

XQ. 742. Did you read the minutes of that conference?

A. I have.

XQ. 743. Did you read them at that time?

A. I assume so. I have no recollection.

XQ. 744. You were really working on the matter, so you assume you read the minutes; is that right?

A. I assume so.

XQ. 745. Now I am going to get you to identify for me the persons present at that conference as having been down there. Mr. Mansfield Ferry; just say who he was?

A. He was a lawyer connected with the Alien Property Custodian.

XQ. 746. He was general counsel of the Alien Property Custodian, was he not?

A. Whether he was at that time or a little later, I do not know.

XQ. 747. Mr. F. J. Horne?

A. He was Director of the Bureau of Trusts.

By MR. KRESEL:

XQ. 748. Of the Alien Property Custodian?

A. Of the Alien Property Custodian.

By MR. ANDERSON:

XQ. 749. Mr. W. T. Gordon?

A. He was the young man in the Patent Division; seen here.

XQ. 750. He was a lawyer?

A. Yes, sir.

XQ. 751. Mr. Joseph H. Choate, Jr.?

A. Mr. Joseph H. Choate, Jr., was the gentleman in the Bureau of Investigation who had charge of the investigation of chemical matters.

XQ. 752. He was associated with your office?

A. Associated with our office.

XQ. 753. Ramsay Hoguet?

A. Ramsay Hoguet was the patent counsel of the Alien Property Custodian's office.

XQ. 754. On the minutes of that meeting, which I hold before me, is the heading: "Committee of American Dyes Institute."

A. Yes.

XQ. 755. Mr. M. R. Poucher. He was the representative of the duPont Company, you said, was he not?

A. One of the representatives of the duPont Company.

XQ. 756. Mr. Henry Wigglesworth. Who was he?

A. One of the representatives of the General Chemical Company.

XQ. 757. The General Chemical Company is a subsidiary of the National Aniline, is it not?

A. No, it is a subsidiary of the Allied.

XQ. 757. (Continued.) Allied Chemical Company?

A. An associate company with the General Chemical.

XQ. 758. August Merz?

A. Heller & Merz.

XQ. 759. They are chemical people?

A. Yes, sir; dye people.

XQ. 760. Dye people, yes. R. C. Jeffcott?

A. Calco Chemical Company.

XQ. 761. B. C Hesse?

A. B. C. Hesse is of the General Chemical Company; chemist.

XQ. 762. F. E. Barrows?

A. F. E. Barrows was a patent lawyer with one of those companies.

XQ. 763. It appears in evidence that he was a patent lawyer of the National Aniline; is that right?

A. That is right.

XQ. 764. C. Protto?

A. He is the technical man for the duPont Production.

XQ. 765. And Judge Laffey?

A. Judge Laffey is the counsel of the duPonts.

XQ. 766. There has been introduced in evidence here a letter from Mr. Hoguet, I think, to Mr. Palmer (I can not put my hand on it), referring to the charter of the Chemical Foundation in course of preparation, which I think was dated the 3d of February, 1919. Do you know anything about the preparation of that charter?

A. No. You mean whether I worked on the charter?

XQ. 767. No; I mean do you know anything about it?

A. I know something in general.

XQ. 768. I mean of your own knowledge, Mr. Garvan, speaking as a witness now.

A. No.

XQ. 769. When you stated this morning that Judge Gray and Judge Ingraham had something to do with it, you were speaking from hearsay?

A. No; I knew Judge Ingraham had something to do with it.

XQ. 770. How did you know that?

A. Because I was in daily touch with him in the New York office.

XQ. 771. So you do know that Judge Ingraham had something to do with the preparation of the charter?

A. But I did not know that he had so much to do with the charter as with the trust agreement.

XQ. 772. The trust agreement was prepared much later, was it not?

A. Not much later.

XQ. 773. Mr. Garvan, do you not know as a matter of fact that that charter was drawn by Mr. Prindle, counsel of the duPont Company?

A. I do not.

XQ. 774. You do not know that?

A. No.

XQ. 775. Had you had any conferences with anybody about the seizure of German patents prior to the sale of the Bayer Company?

A. Yes.

XQ. 776. State with whom?

A. Mr. Choate.

XQ. 777. Anybody else?

A. Not that I remember now. I know I did constantly discuss it with chemical men and with the dye men.

XQ. 778. You did constantly discuss it with the dye men?

A. Yes.

XQ. 779. In one of these books in evidence, to which I will refer if counsel desires, but I can not remember it, either you or Mr. Choate testified and Mr. Palmer states in his report that when the matter was suggested, it was enthusiastically received by the dye industry.

MR. KRESEL: What was suggested?

MR. ANDERSON: The matter of seizing and selling these patents, the plan. Well, I better get the information.

MR. KRESEL: I think you better read what you refer to. I do not recall that statement.

MR. ANDERSON: It will take a little time to find it; there are so many of these papers.

MR. KRESEL: I think I can locate what you have in mind. I think this is what you have reference to, Colonel, page 101. You better read the whole paragraph.

XQ. 779 (Continued.) I will read the whole paragraph as counsel suggests, from the answer, page 101, report of Mr. Palmer:

> "The idea was accordingly conceived that if the German chemical patents could be placed in the hands of any American institution strong enough to protect them, a real obstacle might be opposed to German importation after the war, and at the same time the American industry might be freed from the prohibition enforced by the patents against the manufacture of the most valuable dyestuffs. Accordingly, these considerations were laid before various associations of chemical manufacturers, notably the Dye Institute and the American Manufacturing Chemists' Association. The suggestion was met with an instantaneous and enthusiastic approval, and as a result a corporation has been organized to be known as The Chemical Foundation (Inc.)," and so forth.

That is in accordance with your understanding of the situation, is it?

A. It was always enthusiastically received by the associations, because the little men did not have to pay anything and the patents were there waiting for them.

MR. ANDERSON: I will ask to strike that out.

THE COURT: Let the answer be stricken out and the question repeated.

THE WITNESS: In general, that is true.

XQ. 779. (Continued.) That is your understanding?

A. Yes.

XQ. 780. You said you had discussions constantly prior to the sale of the Bayer Company, with various representatives of the industry, about seizing these German patents. Could you name some of those?

A. No, I could not, because I cannot remember specific discussions. All I can remember is that Mr. Choate was constantly discussing the importance of these patents to our work for developing a general organic industry.

XQ. 781. You speak of your work for developing a general organic industry.

A. Yes.

XQ. 782. Would you define more definitely what you mean by that?

A. Why, we very early realized that organic chemistry in general depends for its progress upon having a complete dye industry, because that is the graduating school for organic chemists. They learn more organic chemistry in a dye factory in one year than they would learn in any other business in their natural lives, because it is so much more used.

After seeing the power and the position that these Germans held over us here, we were enthusiastic for freeing this country from that dependence which it had been suffering under. No one could help being, to

read the literature and the correspondence and go through daily what we were going through in our experience with them.

XQ. 783. And the thing that you were working for was the development of an organic chemical industry in this country?

A. No, that was only the means to the end. The end was to free this country from the yoke of the Germans.

XQ. 784. First you wanted to free the country from the yoke of the Germans, and then what followed that as your next step?

A. Then freedom for all of us and safety for our people and the development of medicine under a civilized people.

XQ. 785. And you wanted to develop the organic chemistry in the hands of the civilized people?

A. I did.

XQ. 786. And your idea of the way to do that—I want to get your outlook on the situation——

A. Certainly.

XQ. 786. (Continuing.)—was to seize these German patents and turn them over to such a corporation as the Chemical Foundation, Inc.; is that the idea?

A. To seize these German patents and to put them in such a position that every American would get a chance to develop them free from the power of constraint or restraint by Germany.

XQ. 787. And that was the subject matter and aim and object of your conferences with the dyestuffs people in January and preceding that, the time you have spoken of, your various talks and so forth?

A. Absolutely.

XQ. 788. That was your object?

A. Absolutely.

XQ. 789. And that was your object in conceiving and directing, in co-operation with Mr. Palmer, of

course, the organization of the Chemical Foundation, Inc.?

A. Yes, sir.

XQ. 790. And that was your object in seizing and selling these patents to the Chemical Foundation, Inc.?

A. Yes, sir.

XQ. 791. Now, Mr. Garvan, I read you from your testimony awhile since, and I will not repeat it unless you desire it—if you do, I will—the statement that the sale of these patents was consummated on the 10th day of April, 1919. Was that statement correct?

A. The sale was completed before I went in there. If you call the signing of the assignment the consummation, it is. But I regarded the contract as made before I became Alien Property Custodian.

XQ. 792. Mr. Garvan, you are a lawyer, are you not?

A. Yes.

XQ. 793. Don't you know that the Government of the United States can not, and no officer of the United States can, make a verbal contract binding upon the Government?

A. No, I do not know that.

XQ. 794. You did not know that?

A. No.

XQ. 795. Who made the contract for the sale of these patents?

A. A. Mitchell Palmer.

XQ. 796. Who represented the Chemical Foundation in the negotiation?

A. The committee of the Dyes Institute and the other chemical companies that were then in New York.

XQ. 797. Name them, please.

A. I would say Mr. Merz, Mr. Poucher, Mr. Jeffcott, Mr. Wigglesworth—I don't know—and whoever they represented.

XQ. 798. You have identified these gentlemen, as

to who they represented. They are the same gentlemen that you identified just now as representing certain dyestuff companies?

A. No, no, no. They were the committee acting for the American chemical industry and——

XQ. 799. A committee of what organization?

MR. KRESEL: You both talk at the same time. Won't you please let him finish, Colonel?

MR. ANDERSON: I will with the greatest pleasure if he will do me the equal favor of just stopping when he has responded to my question. I know he wants to.

XQ. 800. I am not being unpleasant about it, Mr. Garvan; I am trying to be as pleasant as I can. They were a committee of what organization?

A. Of both the manufacturing chemists' organization and of the Dyes Institute and of any other chemical industries that wished to join with them.

XQ. 801. I believe you testified this morning that you had a conference with these gentlemen in your office in New York, did you not?

A. Well, there were fifteen or twenty at that conference. Those I can not remember.

XQ. 802. You can not remember all of them?

A. No.

XQ. 803. And you said at that conference they made a proposition to buy all these patents at $250,000?

A. There was general discussion about Mr. Palmer's proposition. I do not say they. I did not say they made the proposition.

XQ. 804. I beg your pardon.

A. If they made the proposition, it was a counter-proposition to ours. We were the ones who called them there and put the proposition to them.

XQ. 805. Will you watch my question and just answer it?

A. Certainly.

XQ. 806. Because I do not want to move to strike out. You testified this morning that you had this conference with these gentlemen?

A. Which conference are you talking about?

XQ. 807. I am speaking of a conference at Forty-second Street, New York.

A. Yes.

XQ. 808. And that they made a proposition of $250,000, and you went down to Mr. Palmer and communicated it to him, and that he said it was satisfactory, and you went back and advised them that it was satisfactory?

A. That is true.

XQ. 809. Was that right?

A. Yes.

XQ. 810. Who were the "they" that made that proposition?

A. All this whole group.

XQ. 811. Who specifically spoke for them in making the proposition?

A. I can not tell you that.

XQ. 812. Whom did you represent in that deal?

A. I represented the Alien Property Custodian.

XQ. 813. That was before the organization of the Chemical Foundation, was it?

A. I think so. I think it was.

XQ. 814. Was it prior to the fifteenth day of February, 1919?

A. It was about that time. I would not be able to say.

XQ. 815. Have you any minutes of that meeting?

A. No.

XQ. 816. Or any letters or memoranda on the subject?

A. No.

XQ. 817. Nothing at all?

A. No.

XQ. 818. Mr. Garvan, you have testified in this matter and been asked about the organization of the Chemical Foundation and the sale of these patents no less than four or five times, I think you said, have you not?

A. Three times.

XQ. 819. Three times?

A. I think that is all.

XQ. 820. You have been very closely questioned about the whole transaction, have you not?

A. Yes, sir.

XQ. 821. Can you now or can you before the close of this case go through your testimony and point to any place where you have ever mentioned that there was any such conference, any such proposition made or any such transaction as you have indicated in your evidence this morning?

A. My testimony is there.

XQ. 822. Well, are you willing to admit that there is no reference to any such thing?

A. No, I am not any such thing.

XQ. 823. Then will you look up and see if you can find any such reference, and let me have it?

A. I certainly will.

XQ. 824. Then you regarded this sale as completely consummated prior to the 16th day of February, 1919?

A. If you will tell me what you mean by "consummated."

XQ. 825. I am asking you. You have used the expression.

A. The facts are there. The bargain was made and closed before I became Alien Property Custodian.

XQ. 826. How many patents did you sell?

A. Whatever there were; whatever the search

would reveal in the Patent Office, relating to the upbuilding of an organic chemical industry.

XQ. 827. No matter what there were?

A. No matter what there were.

XQ. 828. At that time the search had just been begun, really, had it not?

A. I did not have charge of the search. I could not tell you just how far it had progressed.

XQ. 829. You did not know how far it had progressed?

A. No.

XQ. 830. You had no idea how many patents would be involved in the sale?

A. Well, we had a general idea.

XQ. 831. How did you get the general idea if you had not made a search?

A. I think from the list of the Federal Trade Commission.

XQ. 832. You had a list of the Federal Trade Commission?

A. Yes, I think so.

XQ. 833. But you used whatever there was?

A. Whatever there was.

XQ. 834. And whatever the search might develop?

A. Yes.

XQ. 835. As relating to the chemical and dyestuffs industry of the United States, you sold in a lump sum, for the sum of $250,000 at that time?

A. Yes.

XQ. 836. And you agreed to do it at a private sale?

A. Yes, sir.

XQ. 837. And that was agreed to at this conference in New York?

A. Yes, sir.

XQ. 838. How did you arrive at the price of $250,000?

A. By discussion of all the elements involved.

XQ. 839. Tell us some of them.

A. Well, in the first place there was the fact that none of these patents carried any know-how with them, that unless——

XQ. 840. Let us take up that one. That is the first one.

A. Wait a minute.

XQ. 841. No, hold on, I want you to tell one at a time, and then you can take the next one.

A. Can I not finish the answer?

THE COURT: Has he finished the answer to your question?

MR. ANDERSON: No. I will withdraw the question and put it this way:

XQ. 842. Tell us one of the considerations that was discussed?

A. The fact that the patents were worthless unless some business concerns put up the money to build a plant and make the research to find out how to work them.

XQ. 843. I see.

A. That of themselves they would not help you —but very little.

XQ. 844. Who suggested that idea?

A. I think we all recognized that idea—our own reading and studying and experience.

XQ. 845. You are not a patent expert, are you?

A. No.

XQ. 846. Mr. Choate had never been a patent expert before he studied this subject?

A. No.

XQ. 847. Can't you suggest who raised the question of their being in that situation—the patents?

A. I think we all raised that.

XQ. 848. You all raised it?

A. Yes, everybody knew that.

XQ. 849. Well, that is one thing that you all agreed on?

A. Yes.

XQ. 850. How about those licenses by the Federal Trade Commission?

A. None of them had been worked, except that they had been re-discovered.

XQ. 851. As a matter of fact, were they not then yielding royalties?

A. Yes, but there had been hundreds and hundreds of thousands of dollars spent on finding out how to work them. Look up how much the Government spent on salvarsan, take how much the Schambergs spent, take Metz going to Europe for four months and getting the know-how and could not do it when he came back.

XQ. 852. Yet the fact was there were 128 of those patents, of the most important of them, or more important of them, licensed, and then producing revenue under the Federal Trade Commission licenses, and being used in the United States; is that not true?

A. I do not know how many were being used or how many were being licensed.

XQ. 853. Did you take any trouble to find out how many were being licensed?

A. I knew there were a number of them licensed, and I know nine out of ten of those licenses were not——

XQ. 854. You knew a number of them were licensed?

A. Yes.

XQ. 855. Then just stop there. Did you take the trouble to find out what was the revenue being yielded by those licenses under the Federal Trade Commission?

A. No, I did not.

XQ. 856. You did not?

A. No, I did not.

XQ. 857. You did not refer to it. Was it not true also that some considerable number of those patents were then being employed in industry in the United States under contracts which had been seized by the Alien Property Custodian and were then in his possession?

A. I think there were some of those.

XQ. 858. Did you take the trouble to find out what these contracts were yielding in the way of payments, licenses or revenues?

A. I did not. I was not in charge of the Alien Property Custodian's office in Washington.

XQ. 859. I know, but did you take the trouble to find out?

A. No.

XQ. 860. So much for the know-how. Tell us what was the next consideration you discussed; just take one.

A. The next one was that we had to give non-exclusive licenses to everybody, whether he was a stockholder or not in the corporation.

XQ. 861. You had to give non-exclusive licenses?

A. To everybody. That is, every American citizen.

XQ. 862. You had to give non-exclusive licenses to every American citizen?

A. Yes, sir.

XQ. 863. I will ask you was this point discussed, that under non-exclusive licenses at a reasonable royalty the license income from the patents might be increased instead of decreased; was that considered?

A. No, sir.

XQ. 864. That was not considered at all?

A. No, sir.

XQ. 865. Nobody made that suggestion?

A. No, sir. It would have been talked down if they had, certainly. There was a very limited consumption of dyes in the country. Now, just as quick as you make non-exclusive licenses you divide up a limited market. You are talking about an unlimited market where you can increase the consumption, but you can only increase the consumption in America practically in proportion as the population increases.

XQ. 866. Has not America a very considerable export trade?

A. Since Germany got free she had none until the occupation of the Ruhr. Germany cut it off like that (gesturing).

XQ. 867. Do you mean to say America had no export textile trade at the time?

A. I thought you meant dye and chemical trade.

XQ. 868. Does not dye go into the textile business?

A. Oh, yes.

XQ. 869. And therefore the export trade would be considered as well as the domestic trade as affecting the market for dyes in America, would it not?

A. No, not the export of textiles.

XQ. 870. It would not be at all?

A. No. Our export of textiles is very small.

XQ. 871. Do you know what our export of textiles is in value per annum?

A. No, but I do not believe it is very large.

XQ. 872. But you did not consider that element at all, did you?

A. No, no.

XQ. 873. What is the next element you considered in arriving at the value of these patents?

A. That nobody who was going to put their money in could get more than six per cent. on it.

XQ. 874. I understood that the main purpose here was the development of American industry?

A. It was.

XQ. 875. For patriotic purposes?

A. It was.

XQ. 876. And the people who underwrote this scheme were all interested in that industry, were they not?

A. No, sir. Who underwrote it? Yes, sir.

XQ. 877. That is what I thought.

A. I beg your pardon. I thought you meant stockholders.

XQ. 878. They all underwrote it and they were interested in the development of the industry and that was the purpose you all had in view, was it not?

A. Yes, sir.

XQ. 879. So that they would not invest their money in the development of their own industry on a a six per cent. basis; you thought that was a very serious handicap to this business?

A. Why, certainly; nobody goes into business on that basis.

XQ. 880. What was the next consideration that influenced you in fixing the value?

A. Well, that you had to give a license to the Government.

XQ. 881. Did you have to give a license to the Government?

A. We did.

XQ. 882. Absolutely obligated to give a license to the Government?

A. Absolutely obligated to give a license to the Government.

XQ. 883. And you agreed to this price?

A. There were other elements, I think.

XQ. 884. Well, take up the next one. Let us take the next one.

A. They had to trustee their stock for seventeen years.

XQ. 885. All their stock?

A. Yes.

XQ. 886. Or only their common stock?

A. Well, common stock.

XQ. 887. Now, is there any other consideration that entered into fixing this price?

A. Those are the main ones.

XQ. 888. Those are all that you can now recall?

A. Yes.

XQ. 889. And the Chemical Foundation was incorporated in accordance with the agreement thus made, was it?

A. Yes, sir.

XQ. 890. And you embodied the agreement that you made in the charter of the Chemical Foundation to the end that it would be a contract binding on the company and on everybody, was that the idea?

A. Yes, sir.

XQ. 891. And the price that you fixed, or that you and Mr. Palmer fixed for these patents, was founded upon the ideas and the purposes and the provisions which were then embodied in this charter; is that not true?

MR. KRESEL: Colonel, please don't say that he fixed it.

A. I don't know whether all those things are specifically embodied in the charter. The charter speaks for itself. I can not right now carry in my mind everything that is in the charter.

XQ. 892. Very good. I will let it speak for itself. That charter was in course of preparation by Mr. Hoguet; don't you know that?

A. No, I think Mr. Choate had more to do with that charter than anybody.

XQ. 893. Mr. Choate?

A. I think so.

XQ. 894. Mr. Garvan, do you not recall that Mr.

Choate testified before one of the committees in your presence that he had nothing to do with it?

A. No, I don't remember that. I don't think he testified to that.

XQ. 895. I will not stop to get it now, because I do not think it is material. After you had these negotiations that you have described to sell all these patents and you reported to Mr. Palmer and reported back to them that it was agreeable to everybody, what was your next connection with this matter?

A. I do not understand what you mean.

XQ. 896. I mean, what did you do next about it after that conference about the 15th of February that you state was held and when you say there was an agreement made; what did you do then?

A. I do not know what I did then.

XQ. 897. You do not remember what you did then? Well, you remember that you were elected a director of the corporation on the third day of March, 1919, do you not?

A. Yes, I think so.

XQ. 898. That was the day before you became Alien Property Custodian?

A. Yes, the incorporators met here that day.

XQ. 899. You do remember that the corporation was incorporated on the 19th day of February, 1919?

A. Yes, sir.

XQ. 900. You do remember that you became Alien Property Custodian on the 4th. You have testified to that?

A. Yes.

XQ. 901. And that on the 8th you became president of the Chemical Foundation by a formal election, did you not?

A. I knew we were elected directors on the 8th and I guess they did have a meeting on the same day and elected the officers. I think so.

XQ. 902. And you do remember that on the 8th——

A. I meant that we qualified as directors. We were elected on the 3d.

XQ. 903. You do remember that at the same time Mr. Choate was appointed general counsel of this company, do you not?

A. Well, it was at that meeting or very shortly after. I don't know.

XQ. 904. If the minutes show at that meeting, that is correct?

A. Whatever it is.

XQ. 905. And that Mr. Hoguet was appointed patent counsel for the Chemical Foundation?

A. Yes, sir.

XQ. 906. That Mr. Corbett became the secretary at that time?

A. Secretary and treasurer, I think.

XQ. 907. Mr. Corbett had been vice-president of the Central Union Trust Company?

A. Was then.

XQ. 908. And Colonel Douglas I. McKay became the vice-president of the Chemical Foundation?

A. Yes, sir.

XQ. 909. And you do remember that on the 10th day of April you conveyed the patents described in the first and large assignment here and other rights to the Chemical Foundation and at that time you were president, were you not?

A. Yes, sir.

THE COURT: Do counsel want to go on for another hour, or do you want to stop now?

MR. ANDERSON: If your Honor please, if it is agreeable to counsel, I would like to stop because I have been suffering intensely with a headache all day.

MR. KRESEL: I have no objection, your Honor. I am quite willing.

THE COURT: We will renew the proceedings in this case on Thursday morning at 8.30 Standard time.

(Whereupon, at 3.00 o'clock P. M., an adjournment was taken until Thursday, July 5, 1923, at 8.30 o'clock A. M. Eastern Standard time.)

TWENTY-FIRST DAY.

Wilmington, Delaware,
July 5, 1923, at 8.30 o'clock A. M.
Standard Time.

Before:

HON. HUGH M. MORRIS, *U. S. District Judge.*

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

FRANCIS P. GARVAN resumed the stand.

CROSS-EXAMINATION (Continued).

By MR. ANDERSON:

XQ. 910. Mr. Garvan, at the time of adjournment on Tuesday, I had been asking you as to the circumstances surrounding the original sale of patents and the organization of The Chemical Foundation. There are one or two questions that I would like to ask this morning as to another phase which I had practically covered. You recall that I asked you as to the investigations and reports on the properties of the Badische Company, the Farbwerke-Hoechst Company, Cassella Color Company, and various other companies which I

named and are mentioned in the part of Mr. Palmer's report filed as an exhibit with the answer in this case?

A. Yes, sir.

XQ. 911. I do not recall whether you testified or not as to whether all these properties were seized by the Alien Property Custodian prior to his report in February, 1919. Do you recall

A. Badische, Hoechst?

XQ. 912. Cassella?

A. Cassella.

XQ. 913. Kalle Color Company?

A. It would be my impression that they were.

XQ. 914. They were all seized. As I understood, none of these companies had any property or plant in the United States with the exception of the Bayer and possibly the Roessler-Hasslacher Company.

A. Oh, the Roessler-Hasslacher Company had big plants.

XQ. 915. I mean, the Bayer Company and the Roessler-Hasslacher Company had plants; the others were merely selling agencies?

A. Selling agencies.

XQ. 916. And distributing agencies for the German manufacturers?

A. Of course, Mr. Metz had some other companies in which he was interested.

XQ. 917. Yes; but the Farbwerke-Hoechst was merely making salvarsan?

A. There were four or five of those companies, Colonel. That company, I think, was making salvarsan.

XQ. 918. Yes; I want to get that straight.

A. I think that is so. I am not sure whether it was being made under that name or the Metz Laboratories. I am not positive.

XQ. 919. Subject to the possible modification as

to Mr. Metz's plants, as to which I think he testified, with the exception of Bayer and Roessler-Hasslacher, those institutions were merely agencies, either individuals, partnerships, or domestic corporations, acting as agencies for the German firms in the selling of their products; is that true?

A. Yes.

XQ. 920. The Kuttroff-Pickhardt Company was the agent of the Badische Company, was it not?

A. Yes, sir.

XQ. 921. And they were large importers of dyestuffs, were they not?

A. Very large, yes.

XQ. 922. And also of medicinal and pharmaceutical properties, were they not?

A. I am not sure how far the Badische Company went into the medicinals. Not very far, I don't think. They may have, but I don't think so. The Bayer was the principal medicinal concern.

XQ. 923. But they were not manufacturers in any sense in this country?

A. No, sir.

XQ. 924. On Tuesday, I also asked you in regard to the method of making up reports, appraisals, advertisements and sales of these properties seized by the Alien Property Custodian and you referred to the prospectus of the Bayer Company as an illustration of the method of sale. Can you identify that as one of the prospectuses of the Bayer Company?

A. Yes.

XQ. 925. And that, with such changes as were necessary to suit the individual case, was the usual method of selling these German properties?

A. Yes, sir.

MR. ANDERSON: I would like to offer in evidence a paper which the witness has identified, being a prospectus for the sale of the stock of the

Bayer Company, Inc., and the Synthetic Patents Company, omitting from the document the photographs contained in the center thereof, to be identified as Plaintiff's Exhibit 612.

MR. KRESEL: No objection to that.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 612." (*See Exhibits, Vol. III, page 1449.*)

XQ. 926. Mr. Garvan, you stated that you personally appeared before the Advisory Sales Committee, as the record shows here, on the 14th of February, 1919, and presented to them the matter of the proposed sale of the German patents and trademarks through the organization of the Chemical Foundation, as described in this record?

A. Yes, sir.

XQ. 927. I would like you to state as clearly as you can just what you said to the Advisory Sales Committee?

A. Of course, it is very difficult for me. I will give you the substance of it. I have no record of what I said.

XQ. 928. As far as you can?

A. My recollection is that I told them—just preliminary to that, Colonel, I probably did not tell them so much about the Bayer. They were already familiar with it. The Bayer had passed through their hands, don't you see; had been sold and passed upon by them. The same may have been true of other companies, so I can not tell to what extent I went into the past history.

But I did explain our situation in the country in reference to organic chemistry and I did explain to them that the taking over of these patents was essential to insure freedom of that industry, which had been

created by the war, of developing it to the extent where it would be able to protect itself in case of war.

XQ. 929. Would you mind me interrupting you? What do you mean by taking over?

A. I did not mean to say in case of war. I will strike that out.

XQ. 930. Do you mind my interrupting you to ask what you mean by "taking over"?

A. Of selling these patents, getting them into American hands, taking them from the Germans and putting them into American possession.

XQ. 931. All right, proceed.

A. I explained to them what it meant to our industries, what it meant to our National Defense and what it meant to our progress in medicine, and I stated to them that we had gone to the industry and asked the industry if they would get all elements together and become the purchaser of these patents under the terms and conditions which Mr. Palmer felt it necessary to lay down for the protection of the country; that I had done so and that they were willing to work along with us. I told them that we had discussed price with them, and I am not positive whether we had definitely come to our agreement as to the price, but that $250,000 seemed to be the price which was the nearest we could get at, what they were worth sold under those conditions and what the industry in view of the fact that they would have to put up more capital and defend them would be willing to raise.

I said the whole thing was dependent upon their willingness to become trustees, that the responsibility would be with them, there would have to be a non-profit making thing and a thing of which they would assume the responsibility. That is as near as I can remember. You must remember I was in daily conference with this committee.

XQ. 932. What committee?

A. The Advisory Sales Committee, Judge Ingraham and Mr. Bannard and Mr. Dodge, but more Judge Ingraham than Mr. Bannard, were in constant communication. They gave up practically their whole time, particularly Mr. Bannard, to that war work. So that whether all the conversation was in the committee or afterwards, I do not know that they recommended that Judge Ingraham be asked to take care of the Trust Agreement and the responsibilities which they were to assume, and from that time on with us, they have of course been working.

XQ. 933. Then you had discussed the price of $250,000 prior to your meeting with the representatives of the industry on the 15th or 16th which you described on Tuesday?

A. Oh, yes, the price was discussed at all times.

XQ. 934. Can you remember when the price was first discussed?

A. No, I can not.

XQ. 935. Do you recall the minutes of the Executive Committee of the Dyes Institute, held on the 7th of February?

A. I read them before this trial started, but I have not read them since.

XQ. 936. Do you recall that in that report it was stated that Mr. Hoguet had suggested the price of $250,000?

A. I don't remember that, no. I would want to refresh my recollection on that.

XQ. 936a. Mr. Garvan, could you say who first suggested a price for these patents?

A. No, I could not.

XQ. 937. Could you say when the price was first suggested?

A. No, I could not say that.

XQ. 938. But the $250,000 figure was discussed prior to the 14th of February?

A. Yes, I am quite sure.

XQ. 939. You told us the conditions which were discussed as surrounding this sale at your conference with the members of the industry on about the 15th or 16th, at your office in New York, but you did not tell us how the price of $250,000 was arrived at. Could you tell me that?

A. That was arrived at out of the general negotiations.

XQ. 940. I know; but there must have been some way that $250,000 was fixed as distinguished from $100,000 or $500,000. Now, could you tell me how you fixed the sum of $250,000?

A. I think that that was the largest sum that we could get and the least we would accept, like all negotiations as to price.

XQ. 941. What were the elements that entered into it?

A. The elements that entered into it were, first, that the biggest companies already had a license from the Federal Trade Commission on the patents which they had found that they needed up to that time. The patents had been on the shelf for a year and a quarter, and both the bigger companies and some of the smaller companies had taken out licenses on all the patents that they knew about, that they felt they were going to use at that time. That was one of them.

XQ. 942. Who stated that fact?

A. Both the National and the duPonts stated that, that they had these licenses. That is only one, if you want me to finish my answer.

XQ. 943. Yes, all right.

A. Then, of course, there was the fact that with these patents there came no knowledge of how to work

them. They had already been, or at least some of them had been long enough in the dye business to know——

XQ. 944. What they knew is not material. It is what they said.

A. Well, they said what they knew.

XQ. 945. All right.

A. That they had already been spending enormous amounts to discover how to make these vat dyes and these colors for which they had a license from the Federal Trade Commission and had been able to get nowhere so far.

XQ. 946. They had spent very large sums?

A. Very large sums of money.

MR. KRESEL: Wait a minute.

XQ. 947. When you said "they," whom did you mean?

MR. KRESEL: Pardon me, Colonel. Had you finished your answer, Mr. Garvan?

THE WITNESS: Yes.

A. The Newport, Sherwin-Williams, Calco, du-Ponts, National Aniline.

XQ. 948. They had spent large sums in developing the dye business?

A. Well, in research, attempting to develop, yes, sir.

XQ. 949. At that time the dye business was quite large in the United States, was it not, 1919?

A. It was large in bulk, but it had not reached the point of development——

XQ. 950. Now, Mr. Garvan, one minute.

A. I haven't answered yet.

XQ. 951. I know you do not want to go beyond the question. You said the dye business in the United States was quite large.

A. Oh, yes, sir.

XQ. 952. That is all.

A. But I have not answered your prior question as to all the elements that went into that.

XQ. 953. I thought you said you had.

A. No, sir.

XQ. 954. Then go ahead.

A. Then the element, as I have said before, the element of the non-exclusive character of the licenses. The dye business of the country in 1913 had only been $10,000,000 in imports; probably sold in this country for $25,000,000. With the increase of prices in the war and the increased consumption by our soldiers of the uniform colors, the solid colors, it perhaps had grown to $60,000,000. But the most you could figure on as the normal gross dye business in the country was forty millions of dollars; and that if you granted non-exclusive licenses and it reached the point where two or three could make these dyes, why, the profit in it would be very small.

If it was an exclusive license and they would have control of all that America used of that patented product yes, you could discuss a price, but——

XQ. 955. Then the profit in it would be very large?

A. It would be large as long as they were able to—whatever they could force out of the people, don't you see?

Then there was the feature of the license to the Government, and then there was the feature that these patented dyes were in direct competition with the Swiss vat dyes. They were in direct competition with the algol colors that we had sold under the Bayer; and that none of the business would be of any value unless Congress looked favorably upon legislation to protect us from imports. England was developing a big dye industry protected by her own Government and the money put in by her Government, and unless we had a tariff in the future, Switzerland or England

or the Bayer Company were three possible rivals of the production under the vat colors. So that all those things were gone into by the hour.

XQ. 956. But prior to that time that you had gone into it by the hour, you had discussed the price of $250,000?

A. Well, simultaneously, at our meetings.

XQ. 957. I thought prior to the 14th you discussed——

A. Oh, yes, but we discussed also all these other things, Mr. Choate and I, for a year probably.

XQ. 958. For a year?

A. For a year, since the early part of 1918. Mr. Choate fully realized the relation of the patents to the industry.

XQ. 959. I see.

A. And had been trying to induce me to get Mr. Palmer to do something about it.

XQ. 960. So that, did you consider at all the cost to the persons who took out these patents of the patents?

A. How do you mean, the cost?

XQ. 961. I mean the cost of getting the patents.

A. You mean their research or their cost under the Revenue Act?

XQ. 962. Their research or other cost of getting out the patents; did you consider that?

A. You mean their revenue cost, or how much it cost—yes, we did. We considered that in line with the fact of how they had obtained the passage of the——

XQ. 963. I asked you the simple question: did you consider that question?

A. Certainly.

XQ. 964. Did you ascertain what the cost was of getting these patents out from the Patent Office?

A. We knew generally about what a patent cost, $30 or $40.

XQ. 965. Did you not know that at the conference on the 27th with the Alien Property Custodian's representatives in Washington, Mr. Barrows of the National Aniline had stated that the average cost was about $100?

A. No. I probably did at the time. I mean, I do not recall it now.

XQ. 966. And you estimated the cost at about thirty or forty dollars?

A. No, that is the filing fee.

XQ. 967. Did you not know that the filing fees and expenses in the Patent Office itself were around thirty-five dollars?

A. That is what I said. That is what I thought was about the cost. I only know that from the merest hearsay.

XQ. 968. Was that not discussed at this conference?

A. I assume it was. Mr. Hoguet was the man who was familiar with those details. That was my impression, that it was thirty-five dollars. I must have gotten it from Mr. Hoguet or from somebody who knew.

XQ. 969. Did you not know as a matter of fact that usually there were attorney's fees, printing expenses and other expenses in addition to fees in connection with getting these patents out?

A. Oh, yes.

XQ. 970. You did know that?

A. Oh, yes.

XQ. 971. I believe you put in some figures here which showed that the cost of these patents, trademarks, and so forth, which you called "properties," which you took over, was an average of about——

A. I think it was $40 or $41.35.

XQ. 972. You subsequently sold a number of other patents and you fixed in your assignments a regular price of $50 each, did you not?

A. In the assignments?

XQ. 973. In the subsequent assignments.

A. Yes, sir. Not all of them were fixed that way, Colonel.

XQ. 974. I am talking about the sales to the Foundation.

A. Yes. I do not think all of them were. Some of them will bear that rate. Those that were sold at the request of the Navy, I think some of them bear less.

XQ. 975. How did you arrive at the price of $50 each for the subsequent patents that were sold?

A. That was arrived at by averaging in our head generally what we had paid for the first ones. As a matter of fact, we should not have given any consideration for those subsequent ones because the original price was supposed to have included all of the patents that were essential for the purposes of the creation of the Foundation.

XQ. 976. And you did seize and sell all the dye and chemical patents enemy-owned so far as you could discover them up to the time of your retirement from office?

A. Yes, sir.

XQ. 977. I believe you stated on your direct testimony that you had testified three times before Committees of Congress?

A. Yes, sir.

XQ. 978. You testified once before the House Committee?

A. The House Ways and Means Committee.

XQ. 979. Considering the tariff bill for import duties and dye embargo?

A. Yes, sir.

XQ. 980. You testified once before the Senate Committee considering substantially the same legislation?

A. Yes, sir.

XQ. 981. In 1919, did you not?

A. Yes, sir.

XQ. 982. You testified again before the sub-committee of the Judiciary investigating the alleged dye monopoly n 1922?

A. Yes, sir.

XQ. 983. In all of those hearings you were very closely questioned as to this transaction, were you not?

A. I think so. I think that is a fair statement.

XQ. 984. You were also questioned in those hearings as to the negotiations and the method of arriving at the price, were you not?

A. No, I was not.

XQ. 985. Did they not ask you a good many times about that?

A. They asked me in general to state how the Foundation was formed.

XQ. 986. Did they not ask you how you arrived at the price?

A. I am not sure as to that. I think Mr. Choate was the one who testified mainly about the formation of the Foundation

XQ. 987. I asked you on Tuesday if you would go over your evidence at those hearings and point out to me any place where you have ever mentioned the conference between yourself and the Dyestuffs representatives, as to which you have testified as having taken place on or about February 15th or 16th, 1919. Have you been able to find any such evidence?

A. I don't think that was quite your question. As I remembered it—I did not have the testimony away with me over the 4th of July—I understood your question was whether I testified about this transaction hav-

ing taken place before I went out as Alien Property Custodian.

XQ. 988. Before you went in as Alien Property Custodian?

A. That is what I mean, yes. I find that I did so state.

XQ. 989. Where?

A. I find that Mr. Choate so stated.

XQ. 990. I am not asking you about Mr. Choate's evidence, I am asking about yours.

A. In the first place, I so stated——

XQ. 991. Will you state where you gave that testimony?

A. I can not look it up now; I will look it up during the day and point it out to you.

XQ. 992. I would very much like to see it. But you can not point now to any place where you testified with reference to the conference that you mentioned as having taken place about February 15th or 16th, 1919?

A. That I would have to look up. If I was asked, I certainly did. I do not know that I was asked.

XQ. 993. In your testimony before the sub-committee of the Committee on the Judiciary, on Senate Resolution No. 17, you gave the following evidence, which was taken under oath——

MR. KRESEL: What page was this?

MR. ANDERSON: At page 392.

XQ. 993. (Continued.) "In order to fix it in the record, when did you become Alien Property Custodian?

"Mr. Garvan. March 4, 1919.

"The Chairman. When was the sale made to the Chemical Foundation?

"Mr. Garvan. The order directing the sale was made February 26, 1919, and the sale was actually consummated April 10, 1919.

"The Chairman. And you became the President of the Chemical Foundation when?

"Mr. Garvan. I was the President from the beginning. The date of the recordation of our certificate is the 19th of February, 1919. So that I was President of the Chemical Foundation at a time when I was a dollar-a-year man in the employ of the Government, but when I had no expectation of doing anything but step out and go back and devote myself to my private practice and thus build up, if possible, the chemical industry in this country.

"The Chairman. You may go on with your statement.

"Mr. Garvan. The question of the compensation to be paid for those patents to the Chemical Foundation was, of course, the arbitrary fixing of a sum or sums. We had to take into consideration the fact that the patents were valueless as they stood, with the single possible exception of one or two, and even those were valueless unless capital should be invested in them. Furthermore, we must understand that the condition was made that they were sold to the Chemical Foundation only in trust; that is, that they must license each and every American manufacturer who cared to use a license for any of them, and that no exclusive license should be granted. In other words, we have to grant 10 licenses on each patent if there are 10 applicants, which, of course, is a simple proposition. If you were to put that proposition in a patent and then put that patent up and offer it for sale you could not get five cents for it."

You testified under oath to that effect, did you not?

A. Yes, sir.

XQ. 994. You stated on Tuesday on direct, I think, that a proposition and counter-proposition were made at this conference—that Mr. Palmer made a proposition and the industry made you a counter-

proposition. What was Mr. Palmer's proposition and what was the counter-proposition?

A. Mr. Palmer's proposition was that the—I stated it so many times—it stated that the patents should be sold under the condition that everybody should get a license, a non-exclusive license, with equal rights; that a license should be given to the Government; that the stock should be trusteed for the longest life of the patent, and so forth and so on.

Their first counter-proposition, as I remember it now, was that some one of their people or someone whom they should name should be the trustee and that when the license fees had repaid the purchase price, their licenses then should be free. Those are the two or three last things that I remember were discussed between us.

XQ. 995. There was no proposition or counter-proposition as to price?

A. Well, no, the price was a development of the conversation between us from the beginning. I do not know when the price was settled.

XQ. 996. You also took over a number of pending applications for patents, did you not?

A. Yes, sir.

XQ. 997. Do you remember how many?

A. No, I do not. I can look it up and tell you.

MR. KRESEL: That is all in evidence, Colonel.

MR. ANDERSON: It is already in evidence.

XQ. 998. Have you since perfected those applications into patents?

A. Some have been perfected, some abandoned, and some still pending.

XQ. 999. Do the statments put in show the number which have been perfected into patents?

MR. KRESEL: Yes.

A. I am certain it does. If it does not we will put it in. We had it here. They are included in the total

number quoted by me in my testimony—those which have been perfected.

XQ. 1000. Mr. Garvan, was it your view that the Alien Property Custodian, representing the Government, had the right to seize these patents and turn them over to the industry of the United States at approximately the Patent Office fees for obtaining the patents?

A. I beg your pardon. I did not understand.

(XQ. 1000 repeated as above recorded.)

A. If the President so determined.

XQ. 1001. That was your view?

A. Certainly. I always felt he had a right to seize long before the amendment of 1918.

XQ. 1002. On your direct testimony your counsel read from the Hearings on Bill H. R. 2706, page 360, certain parts of your testimony. Further down on the same page I find this question asked by Mr. Green of the Committee:

> "And you consider it entirely ethical that having obtained information through their connection with the Alien Property Custodian's office that they shall then sell to an institution controlled by themselves?
>
> "MR. GARVAN. Why, Mr. Green, it was by virtue of our connection with the Alien Property Custodian's office that we saw it as our public duty not to let this thing revert to where it was, and everything we have done since has been because of what all of us saw was threatening America and because we saw the situation which had been hanging over America before the war, and it was in our endeavor to use that information for the benefit of the American people that we assumed the burden of carrying on this fight."

You did so testify, did you not?

A. I did.

XQ. 1003. You did testify to that?

A. Yes.

XQ. 1004. In the hearing before the Senate Committee on Finance, on H. R. 8078, page 521, the record discloses the following testimony:

"SENATOR CALDER. How many patents did they take over?

"MR. GARVAN. Four thousand.

"SENATOR CALDER. The Alien Property Custodian sold them these patents?

"MR. GARVAN. It was by private sale by the President.

"SENATOR CALDER. For how much money?

"MR. GARVAN: Two hundred fifty thousand dollars.

"SENATOR CALDER. Will these patents be of any great value some day?

"MR GARVAN. They may or may not. They would be to any person who was going to try to make money out of them. For instance, anybody who owned these patents and wanted to make money out of them would not be urging you to pass this licensing bill. He would be sitting back asking for as large an amount of German goods to come in as possible, because then he could collect the highest kind of royalty from their coming in. It is a great loss of royalty to the Chemical Foundation to urge the licensing system, but that is not the reason for the Foundation. It is to assist, encourage, and promote American industry. Take salvarsan, and that is the most valuable one——

"SENATOR CALDER (interposing). The most valuable patent?

"MR. GARVAN. Yes, sir. That patent in the hands of a private individual who wanted to confine the manufacture to one man and maintain the price of $3.50, would be worth any amount of money, because 10,000,000 syphilitics would want it. We gave it free to the New York State Board of Health, to Massachusetts State Board of Health, and will give it free to any State Board of Health which will equip itself to manufacture

it safely. The Foundation will never get anything from them. We want, by experimentation, to help cure disease. Of course, that patent is not worth anything; I mean, as far as income is concerned, because we want it to help the public and not to make money out of it.

Take the Badische patent on vat dyes; that is susceptible of income, but there is no income possible until somebody in America successfully manufactures the dyes—except upon importation, like this one here. It was suggested that 10 per cent. was put upon it—Mr. Metz suggested as a license fee on that, coming in. That was fixed when the allocation right was given to the German agents here. It has been the policy of the executive committee of the Foundation to charge to any manufacturer whatever was needed to encourage him, 2 per cent., 3 per cent., or 5 per cent., just whatever was necessary to encourage him to manufacture. But when a German agent wanted to import it we thought it proper to impose the 10 per cent. royalty."

You so testified, did you not?

A. I did.

XQ. 1005. As I understand, you do impose at this time a 10 per cent. royalty on importations?

A. Yes, sir.

XQ. 1006. That covers any importations to which these patents apply, either from Germany, France, England, or any other country, does it not?

A. None come from any other country.

XQ. 1007. Do they not import from Switzerland?

A. No, they have got their own patents.

XQ. 1008. Now, Mr. Garvan, I asked you a direct question if that does not cover any importations from those countries?

A. No.

XQ. 1009. Do you mean to say that you allow free importation if anybody wanted to import from

Switzerland the same products as are covered by the Badische dye patents?

A. There are no dyes under our patents.

XQ. 1010. Mr. Garvan, will you answer my question?

A. I do not get it, Colonel.

XQ. 1011. My question is this: do you not under the patents which you own charge a 10 per cent. import license on all dyes imported into the United States covered by those patents?

A. Yes, sir.

XQ. 1012. And do you not charge or undertake to charge 10 per cent. on any dyes, wherever they may come from, covered by those patents?

A. If they should come from any country covered by our patents, yes, sir.

XQ. 1013. Now, you say that the Chemical Foundation is not undertaking to make income; it is not an income-making concern; isn't that your testimony?

A. No, I do not think that is a correct statement of the testimony.

XQ. 1014. I will read your testimony:

> "For instance, anybody who owned these patents and wanted to make money out of them would not be urging you to pass this licensing bill."

As I understand, the Chemical Foundation is not in that category?

A. They are not trying to make the most money they can out of them. Of course we must make some money.

XQ. 1015. You also say that you charged two or three or five per cent., just what is necessary to encourage him to manufacture; is that the case?

A. Yes, sir.

XQ. 1016. Your purpose is the encouragement of manufacture, is it?

A. Yes.

XQ. 1017. And the development of the American industry?

A. Yes, sir.

XQ. 1018. You are not a money-making corporation?

A. Not primarily.

XQ. 1019. And you grant licenses free to State boards of health for the use of products like salvarsan whenever they need it?

A. We offered to, to those two boards of health, but that is a little over-statement of mine. They maintained their Federal Trade Commission license and felt it safer to keep that than to take ours. We offered it to them free.

XQ. 1020. And you make the statement:

> "And will give it free to any State board of health which will equip itself to manufacture it safely."

Is that true?

A. That is true.

XQ. 1021. You make the further statement that the Foundation will never get anything from them; is that true?

A. From the State Board of Health; yes, sir.

XQ. 1022. You make the further statement:

> "Of course, that patent (speaking of salvarsan) is not worth anything—I mean as far as income is concerned—because we want it to help the public and not make money out of it."

Is that true?

A. That is true. It was true at that time. At that time we had not received, I don't think, a nickel on salvarsan.

XQ. 1023. You make the statement in reply to the question as to whether they are of great value that

they would be to any person who was going to try to make money out of them; is that true?

A. In the sense that I stated it there in that connection, certainly.

XQ. 1024. At page 288 of the testimony before the sub-committee on the Judiciary, Senate Resolution No. 77, at the bottom of the page, you testify as follows:

> "THE CHAIRMAN: Very well. You may proceed.
>
> "MR. GARVAN: That is the company of which Dr. Schweitzer was the president. We then saw that the balance of the patents which were owned by the other five companies of the German Cartel stood naked without any tangible property back of them, and that their purchase at public auction was a dangerous thing, because this company that had been bought was in the best position to buy them, because they had a factory to work them; that some speculator in the patents might come in and get them and hold them just to get the royalties on them from either Germany or whichever was the economic value. You see what I mean. Perhaps I do not make myself very clear. If an individual purchaser came in he would just buy the patents; there would be no obligation on him to work them or to develop them, or to start any business. He might say to himself, 'Oh, well, I will wait until after the war and see how much I can get from the Germans for the re-establishment of them,' or he could give an exclusive license to one person to manufacture one drug or one dye, and that was inconsistent with our developing an industry here which would free us from the conditions which I have outlined. Do I make that clear?"

You so testified, did you not?

A. Yes, sir.

XQ. 1025. Did you not know at that time and at the time that the sale was made that if you sold these patents or any of them to a speculator or a company

which would have the power to create a monoply of them, that you had the power, with the approval of the President, to reject the bid and re-sell?

A. I did not get that question.

MR. ANDERSON: Read the question, please. I want a direct answer.

(XQ. 1025 repeated as above recorded.)

A. Certainly.

XQ. 1026. As a matter of fact, was it not proposed in the beginning of these negotiations by the representatives of the dyestuffs industry that the patents should be sold in groups to the end that those directly interested in those groups might buy them?

A. It might have been. I don't remember.

XQ. 1027. Did you undertake to ascertain, before making the sale, whether there were any persons in the United States engaged in manufacture who would desire to buy these patents or specific group of these patents?

A. I don't remember.

XQ. 1028. Did you not in fact know at that time that there were persons engaged in the manufacture of products covered by certain of these patents who would gladly have bought the patents applying to their specific business at a price far in excess of $250,000?

A. I did not.

XQ. 1029. You did not know that?

A. I did not. There might be one possible exception, of whether I knew Mr. Metz would buy the salvarsan patent. That would be the only one.

XQ. 1030. You knew he would buy the salvarsan patent?

A. I certainly did; if he could get our approval.

XQ. 1031. And the same thing applies to novocain and neosalvarsan?

A. We always considered salvarsan and neosal-

varsan together. Novocain I did not consider. I do not remember it being discussed. That had a very short time to run.

XQ. 1032. At that time was it not a fact that the duPont Company had expended very large sums of money in the development of the dye business and was in fact manufacturing and selling very large amounts of dyes?

A. Yes, sir.

XQ. 1033. Some of which were manufactured under Federal Trade Commission licenses?

A. I think that is a fact.

XQ. 1034. At that time was it not a fact that the National Aniline Company, calling it by the short name —you know what I mean?

A. I do, surely.

XQ. 1035. Had also expended large sums of money in the development of the dye business in the United States and was in fact manufacturing and selling large quantities of dyes, some of which were under the Federal Trade Commission licenses?

A. I think their development had reached very little of the patented things. The rest of the question is true. They were a very large manufacturer of dyes.

XQ. 1036. Was it not a fact that the Newport Chemical Company at that time had developed a large business in this country?

A. I think that is true.

XQ. 1037. And they were manufacturers of indanthrene dyes, were they not?

A. I don't think they had accomplished it at that time. I don't think anybody had.

XQ. 1038. They held Federal Trade Commission licenses, did they not?

A. I think so. I would have to refresh my memory.

XQ. 1039. You did not inquire into these matters?

A. Oh, certainly I did. Mr. Mathewson—I detailed my conversation with him. He was the National.

XQ. 1040. That was the extent of your inquiry?

MR. ANDERSON: Read the question, please. I talked it over with the duPonts and I talked it over with the Newport.

XQ. 1041. Let me ask you this: did you at the time you made this sale know how many Federal Trade Commission licenses were outstanding?

A. Individual numbers, no. I knew that——

XQ. 1042. That is all, Mr. Garvan. I just asked you if you knew how many were outstanding.

A. Excuse me. I beg your pardon.

XQ. 1043. At page 394 of the Hearings before the sub-committee on the Judiciary of the Senate, Senate Resolution 77, at the bottom of the page, you testify as follows:

> "THE CHAIRMAN: Is it your present deliberate opinion that the price fixed was, under all the circumstances and in view of all the facts and conditions, a fair and reasonable one?
>
> MR. GARVAN. Oh, yes; it is. I certainly think so, at least. I mean under these conditions you could not have gotten anybody, except people trying to build up the industry to take that proposition."

Did you so testify?

A. I did.

XQ. 1044. Would you mind stating to me exactly what facts and conditions you referred to?

A. I will endeavor to do it once more. The conditions were that everyone in America who wished to go into the business of making dyes or chemicals or any products covered by these patents would be permitted to at the same royalty at which any of the stock-

holders or any other person in the country was permitted to take out a license; in other words, that the licenses would be non-exclusive; that they would be at a fair and reasonable royalty; that they did not contain any information or sufficient information to enable anybody to go into the business without a large expenditure on research and a large expenditure on extensive plant; that the future of the industry was dependent upon the whim of Congress; that unless Congress protected us from the flood of German goods after the war, the patents would have been worthless; that we had to give a license to the Government; that there could not be anything but 6 per cent. made on the stock; that the rest of it had to be spent in the development of general chemical education; that no stockholder would have any control over his common stock; that the entire management of the company was to be in the hands of these five splendid men who had no connection with the industry and whose sole purpose it was to accomplish the purposes of the Government at that time. Those, generally, were the conditions.

XQ. 1045. Those were the conditions that you represented to the prospective purchaser would be imposed?

A. Certainly.

XQ. 1046. And those were the conditions which made it impossible in your opinion, as you state here, to get anybody except the people interested in building up the industry to take up the proposition?

A. Certainly.

XQ. 1047. And Mr. Garvan, was it not true that at that time the Dyes Institute membership represented 90 per cent. of the production of dyes in this country?

A. I do not know. It has been so stated.

XQ. 1048. You knew of the American Dyes Institute at that time?

A. Oh, yes.

XQ. 1049. You were dealing with a committee of the Dyes Institute, were you not?

A. Yes, but that committee was not to represent the Dyes Institute alone. It represented the entire chemical industry or anybody who in the future wanted to get into it.

XQ. 1050. They could not represent people in the future very well, could they?

A. Oh, yes; they could.

XQ. 1051. I see. Then not only the Dyes Institute people but the entire chemical industy was represented by that Committee?

A. Yes, certainly; and the Manufacturing Chemists' Association was distinctly and separately consulted and Mr. Choate and Mr. Hoguet appeared before them and their members subscribed to the stock.

XQ. 1052. I asked you if they were represented?

A. Yes.

XQ. 1053. Was the Manufacturing Chemists' Association represented at that conference that you speak of?

A. Certainly.

XQ. 1054. It was?

A. Yes.

XQ. 1055. And the Dyes Institute Committee was at that conference?

A. Yes. I don't know——

XQ. 1056. Hold on.

A. Excuse me.

XQ. 1057. So far as you know, both the Dyestuffs industry and the chemical industry were represented in that conference?

A. Oh, yes.

XQ. 1058. In dealing with these patents?

A. Oh, yes.

XQ. 1059. At page 292 of the Hearing before the Senate sub-Committee on the Judiciary, you were

speaking of the salvarsan patent and you testified as follows:

> "THE CHAIRMAN. Who owns this patent?
>
> "MR. GARVAN. The Chemical Foundation. That is the patent on which the allegations are mainly based as to the great value of the patents sold to the Chemical Foundation. This patent is a valuable patent, but what faced us in reference to this patent was, if we sold this patent and one person could buy it, we were not in much better position, or there was no guarantee that we were in any better position than we were before the war, because the purchaser need not have made it. He might have sat back and said, I cannot make it, and therefore we must go back and import it from Germany; and he could have asked his own royalty from the German concern and he could have licensed one of those factories, and there would have been a monoply. In other words, you see the whole principle on which the thing was founded was to prevent a monoply, either American or German."

You so testified?

A. Certainly.

XQ. 1060. Now I will ask you, were there not at that time four concerns engaged in the manufacture of salvarsan in the United States?

A. There were.

XQ. 1061. And they were engaged in the manufacture of salvarsan under Federal Trade Commission licenses?

A. They were.

XQ. 1062. And they were making all the salvarsan that the United States needed at that time, were they not?

A. They were.

XQ. 1063. And you knew at that time that the Federal Trade Commission licenses were granted for the life of the patent, did you not?

A. I think that was within the future consideration of the Court.

XQ. 1064. And you knew at that time that under the Act, Section 10 of the Act, if any person had expended money in the development of his business under a Federal Trade Commission license, the Courts of the United States had a right to confirm that license at a reasonable royalty for the life of the patent, did you not?

A. I did.

XQ. 1065. And when I speak of "at that time," I mean both at the time of the sale and the time of your testimony; you understand that?

A. I think so. I think at the time of my testimony one of the licensees had seen the danger of the Federal Trade Commission license and had surrendered it and taken out ours.

XQ. 1066. But at the time of the sale the conditions that you speak of strictly applied?

A. Yes, sir.

XQ. 1067. Mr. Garvan, at page 417 of your testimony before the sub-committee of the Committee on the Judiciary of the United States Senate, Resolution 77, after statement by you as follows:

"So that the $250,000 was an arbitrary price."

You were asked by the Chairman:

"How was that reached? You explained that a moment ago, but give that to us again.

"Mr Garvan. It was reached by consultation between everybody. There were two branches of it. There were 5700 patents that the Army and Navy had infringed, or might have infringed, etc., in war stuff—guns and airplanes, etc., and so on. On those we gave a general license to the Government, with the discharge of all possible infringements or claims for infringement, for $100,000. Again an arbitrary sum. If it should be decided in negotiations that those were worth more to the United States Government than

the $100,000, why, then the outcome of negotiations will be—or Congress has it within its power to grant more to Germany. But we do not feel that Germany, having brought on the war and compelled our Government to spend the money that we did spend in the war, that our developments should be left at the question of individual owners of patents. And therefore we closed that book as far as the situation of the Navy and the War Department was concerned by giving them a general license.

"Then we gave the Government a general license on all those that the Chemical Foundation took over, including a license for all time to have manufactured for its use or to sell its surplus products, etc., and so on.

"Under our charter the stock was $400,000 preferred and $100,00 common. The preferred is six per cent. cumulative and the common is limited to six per cent. So that no one who ever put a dollar into the Foundation can ever get back anything more than that dollar and six per cent. interest. All over and above that, if the happy day ever comes, will be spent for the benefit of chemical education in America. And we have begun to spend it before we got over that."

You testified to all that?

A. I did.

XQ. 1068. Did you or did you not regard the release to the Government from infringement and the licensing to the Government, as you state, for $100,000, of 5700 patents, as conclusive on that matter?

A. I do not get what you mean there.

MR. KRESEL: Conclusive on what matter, Colonel?

MR. ANDERSON: Conclusive on that transaction; that is, conclusive against the owners of the patent.

THE WITNESS: I do not quite see what you mean. I am trying to.

THE COURT: I do not understand the question, Colonel Anderson. Will you not restate it?

MR. ANDERSON: I will reframe it.

XQ. 1069. Did you regard the license to the Government for these patents and the release from infringement under these patents as you have there described, as conclusive so far as the owner of the patent was concerned, and cut off all his rights in that regard?

A. Do I get you: did I regard that the $100,000 which our Government paid for those 5700 patents——

XQ. 1070. Not for the patents, but for the license.

A.—for the license under the 5700 patents which they had used during our war with Germany, did I regard that as conclusive?

XQ. 1071. Yes.

A. I certainly did.

XQ. 1072. Then you further regarded the granting of that license for the life of the patent as conclusive?

A. I certainly—which license?

XQ. 1073. The license granted to the Government of the United States to use the 5700 patents.

A. I certainly never expected our country would ever pay Germany any more than that.

XQ. 1074. Then your statement as to the outcome of negotiations and the power of Congress to grant more to Germany was merely a statement as to the power of Congress and not an expression of your view as to any obligation on Congress?

A. I never anticipated or felt that Congress had any obligation to give Germany anything more.

XQ. 1075. The present stockholders of the Chemical Foundation embrace or represent substantially the entire dyestuffs and chemical industry in this country, do they not?

A. And textile people and steel people, 151 of the

leading firms of the chemical industry and industries which are affiliated and allied with it. It does not represent all, by any means, in the stockholders.

XQ. 1076. You spoke a moment ago of the sum of $250,000 as being the lowest price that the Alien Property Custodian would accept. How did you arrive at that conclusion, or was there any statement to that effect by Mr. Palmer or by yourself?

A. Mr. Palmer said to get the largest price we could consistent with the purposes we were aiming to accomplish.

XQ. 1077. Did you discuss the basis by which you arrived at $250,000 with Mr. Palmer?

A. I discussed all these things I have recited, several times.

XQ. 1078. I am speaking not of the conditions surrounding the sale, but of the actual amounts fixed. That is what I am talking about.

A. I do not get you at all on that, Colonel.

XQ. 1079. If you are going to fix a price for something, assuming now all the conditions you have described, you would either fix $100,000 or $150,000, or some amount under those conditions. Now, did you and Mr. Palmer discuss the amount?

A. Mr. Palmer definitely—finally made the decision as to price. I gave him all the information which I had from conversations with the industry, and what other sources he had—Mr. Hoguet; he had his own bureaus; and whatever other sources he had that were open to him.

XQ. 1080. Well, he fixed the conditions as to price?

A. He was the Alien Property Custodian; I was not.

XQ. 1081. Did you ever discuss with the representatives of the industry to whom you have referred any other price than $250,000? Was that ever mentioned?

A. Oh, I assume so. I do not know.

XQ. 1082. You do not remember discussing any other price?

A. We did not just take $250,000 out of the air and discuss it. I think we asked them how much they could raise and how much they were willing to give and we discussed how much capital they would have to have to maintain this battle.

XQ. 1083. Can you remember any other sum than $250,000 being mentioned as a price?

A. It is very difficult for me to swear to anything like that. My impression is we started with 500 and then we had to concede them that they had to keep 250 for capital.

XQ. 1084. When did you start with the five hundred?

A. What?

XQ. 1085. When did you start with the five hundred?

A. I do not say that I did. I do not remember, I can not tell you.

XQ. 1086. Was it prior to the 27th of January, 1919?

A. That I can not tell you. I can not even say that we did do that.

XQ. 1087. You can not say that you did do that?

A. No. That would be my impression.

XQ. 1088. Can you say now whether any other sum than $250,000 was ever discussed between you and the industry?

A. If you ask me to say whether any other exact figure was discussed, I can not, no.

XQ. 1089. Mr. Garvan, on Tuesday I inadvertently made a statement that Mr. Choate had testified before one of the committees that he had nothing to do with the preparation of this charter. Upon re-examining

his testimony I found he was referring to the order signed by Mr. Polk.

A. Yes, sir.

MR. ANDERSON: I want to correct that on the record.

XQ. 1090. Mr. Garvan, you said you thought you had read the minutes of the meeting of the Dyes Institute, the Executive Committee of the Dyes Institute, on February 7, 1919?

MR. KRESEL: No.

A. I did in preparation for this trial, but I mean not recently.

XQ. 1091. It appears in those minutes that a draft of the charter was presented and read to the meeting by Mr. Gregg? Do you know who Mr. Gregg is?

A. Gregg?

XQ. 1092. Yes.

A. Do not the minutes show? I do not know.

XQ. 1093. I do not think they show.

A. I will find out for you.

MR. KRESEL: That is a new name to me, Colonel. I do not recall it.

XQ. 1094. It is G-r-e-g-g.

A. I do not know. I do not know who he is. I can find out.

XQ. 1095. The statement in the minutes is as follows——

MR. KRESEL: Pardon me. These are the minutes of the Dyes Institute you are reading from?

MR. ANDERSON: The Executive Committee of the Dyes Institute, of February 17, 1919.

MR. KRESEL: Are those in evidence?

MR. ANDERSON: They are in evidence.

A. I beg your pardon. I thought you were asking me if I had read the minutes of the Washington conference.

XQ. 1096. No, I am talking about something else.

A. Then I beg your pardon. I do not believe I have read those minutes.

XQ. 1097. The minutes show the chief matter under discussion was the formation of the Chemical Foundation, Incorporated. Mr. Poucher briefly outlined the facts concerning the stock subscriptions, etc. Mr. Gregg read the draft of the certificate of incorporation. What I wanted to ask you was whether you knew who Mr. Gregg was?

A. I do not, no.

XQ. 1098. At the time that you had the negotiations and made the first assignment, you knew, of course, that the entire capital stock of the Chemical Foundation was underwritten by members of the Dyes Institute?

A. Yes, sir. The Dyes Institute and the Manufacturing Chemists. It was not all underwritten by one.

XQ. 1099. Do you know whether any of it was underwritten by the Manufacturing Chemists?

A. Yes. The General Chemical was not a member of the Dyes Institute.

XQ. 1100. It is now a part of the Allied Chemical, is it not?

A. If you can give me the list I will tell you which is which.

XQ. 1101. It is not important; apparently they are working together.

A. Lots of Mr. Metz's concerns were there, too.

XQ. 1102. You stated at page 2810 of your testimony on direct:

> "Q. 199 (By Mr. Kresel). By the way, may I stop you there to inquire whether any of these gentlemen ever received a penny for their services?
>
> A. Certainly not."

A. That is to whom?

XQ. 1103. To whom were you referring at that time?

A. I can not tell you unless you let me see the record.

XQ. 1104. Well, it is a little indefinite and I thought you could tell me.

A. No.

MR. KRESEL: Just a minute and I will give it to you, Mr. Garvan. (Hands witness paper.)

THE WITNESS: Oh, the trustees.

XQ. 1105. The trustees?

A. Yes.

MR. KRESEL: What trustees?

THE WITNESS: That is Mr. Bannard, Mr. Dodge, Mr. Ingraham, Mr. Griswold and Mr. Stone.

XQ. 1106. At page 2812 you also testified that Colonel McKay served without pay during the entire time he was there.

A. That is true.

XQ. 1107. Colonel McKay was elected early in March, 1919?

A. I think so. I think he was, at the same time we were.

XQ. 1108. I read you from the report of the Alien Property Custodian, submitted as Document 181, Sixty-Seventh Congress, and printed by the Senate, which report was made under Resolution of January 5, 1922, at page 44.

MR. KRESEL: You mean Colonel Miller's report?

MR. ANDERSON: Yes, that is the official report.

XQ. 1108. (Continued) Under the heading "American Transatlantic Company." The directors get a fee per meeting of $50. There appears the name of Douglas I. McKay, 30 Church Street, New York, elected March 28, 1919, total fees received $2,800. You were on March 28, 1919, the Alien Property Custodian, were you not?

A. Yes, sir.

XQ. 1109. The Alien Property Custodian was then in charge of the American Transatlantic Company, was he not?

A. Yes, sir.

XQ. 1110. And I believe Mr. Palmer testified that the Alien Property Custodian, as he said, appointed or nominated the directors to represent him on these Boards, did he not?

A. Do you mean to insinuate that Mr. McKay was getting money for the Foundation indirectly in that way?

XQ. 1111. No, I am not insinuating anything, Mr. Garvan.

A. Those were services he rendered to that company, for which the company paid him their regular fee.

XQ. 1112. You said these gentlemen had no interest.

A. He had none.

XQ. 1113. You said that?

A. He had none.

MR. ANDERSON: It is entirely legitimate for me to show their interests and the source of their interests in this connection.

MR. KRESEL: I did not object, your Honor but inasmuch as the question has arisen, is it the claim of the Government that because Colonel McKay was paid a fee as a director in some other company, that showed his interest, and that showed Mr. Garvan told an untruth when he said Mr. McKay had no interest in the Chemical Foundation? That can be the only purpose of it.

MR. ANDERSON: No, it is merely this. I will say nothing more than the facts themselves disclose. I desire to reflect upon no one, but since it has been urged here in the testimony time after

time that these gentlemen connected with the Chemical Foundation were serving purely for patriotic purposes, that they had no interest and received no compensation for their connection, I think it is entirely legitimate for the Government to show just what compensations they did receive in connection with this service.

MR. KRESEL: What service?

MR. ANDERSON: Any service connected with the Alien Property Custodian. Mr. Garvan was Alien Property Custodian, as Mr. Garvan was president of the Chemical Foundation. Mr. Garvan was Acting Assistant Attorney General of the United States. It is too well recognized to be subject to discussion or open to debate that interest is a very intangible thing. Where a man acts in various capacities at the same time, the association and connection, and the compensation accorded to the various gentlemen concerned from one source represents an obligation to serve in other connections.

To make it perfectly clear, I think it is a duty, though an unpleasant duty and though I hate to go into it, in view of the evidence which has been presented, to show that not only Colonel McKay but the other gentlemen who were officers of the Chemical Foundation were immediately following their selection for those positions elected to various positions on directorships of various corporations from which they received very considerable compensation. I do not want to reflect upon their character in so doing, or upon Mr. Garvan's, but I think it entirely appropriate, though unpleasant, to show whatever interest they had in that connection and whatever benefits they derived from their transactions with the Chemical Foundation or the Alien Property Custodian's

office, not only as showing an interest, but as showing how these things were interwoven with each other as affecting the character and validity of this transaction. It is for that purpose that I offer this evidence.

MR. KRESEL: If your Honor please, you must have noticed that I have not raised a single objection during the entire cross-examination of Mr. Garvan. I have purposely refrained from raising objections because I never want the Government to be in the position of saying they did not have absolute freedom to ask Mr. Garvan any question that they wished. Therefore I shall not object to this. When we come to argue this case before your Honor I shall take occasion to comment upon the testimony that is now brought out.

I do think, however, that inasmuch as the point is being made, the least that the Government can do is to bring out the dates when these gentlemen were appointed to these lucrative positions, so that at least your Honor may be able to say whether, as intimated by Colonel Anderson, the appointments to these directorships followed their services to the Chemical Foundation.

MR. ANDERSON: It is my purpose to show, and I state it in this instance—that Colonel McKay was elected as a director of the American Transatlantic Company on the 28th of March, 1919. I carefully read that. The record shows that he was elected a director and vice-president of the Chemical Foundation on the 8th of March, 1919. The record shows, therefore, that at the time this sale took place Colonel McKay was an officer of the Alien Property Custodian, or rather a representative of the Alien Property Custodian, as well as a representative of the Chemical Foundation, and that relationship, as applying to the

various parties to this transaction, we regard as one of the essential elements of this case.

MR. KRESEL: I also assume that Colonel Anderson will show what services were performed by these gentlemen for which they got directors' fees.

MR. ANDERSON: I will show what positions they occupied. I can not show the services. I am not undertaking to say whether the fees were excessive or not excessive; I am not discussing that question. I am not engaged in discussing the question of the amounts of the fees. I am not undertaking to attack anybody here; I am merely stating the facts which I think establish an essential relationship, in order that this case may be properly adjudicated. Whether I am mistaken or not is a question for argument, when that time arrives. I invite the fullest comment by counsel in the argument.

MR. KRESEL: It makes very little difference, Colonel Anderson, whether you say you are attempting to attack or no. The fact is you are attacking. You are here insinuating that Colonel McKay sold himself to the Chemical Foundation because he was paid $50 a meeting for attending as a director in another corporation. That is what you are insinuating. And you are also insinuating that Mr. Garvan lied when he said that Colonel McKay had no interest and did not get anything from the Chemical Foundation. You can say that you are not insinuating. You are welcome to it all; I shall not object; you go right ahead.

MR. ANDERSON: I have not insinuated anything, and I am merely bringing out the facts. Whatever the facts show is a matter that I am not in any way undertaking to discuss now. I am not indicating Mr. Garvan was guilty of a

falsehood when he stated this, because I read his testimony as to the Chemical Foundation and then introduced the evidence.

THE COURT: Let me ask one or two questions to find out just where we are, because I find it a little difficult to follow the several contentions at all times, you differ on so many points. In fact you differ on all, not only with respect to the facts, their relevancy and materiality, but you differ in a basic way and in detail. Consequently it is very difficult at times for me to apply the various facts that are brought out and it is difficult to follow the issues. There are days when they seem quite clear; there are days when I think I have not the contention of counsel at all and that I must be all wrong.

I do not mean to invite discussion, but only want a clarification, in other words, of the issues leading up to this. If I understand you, Colonel Anderson—and most of my inquiries are directed to you because you have the laboring oar and are the person seeking to pass from one point to another, seeking to get a decree nullifying this sale, and using the sword, and hence, of course, the shield—the main problems occurring to my mind are those as to whether you have made out a complete case. If I understand you, the Government's position is that the amount received for the patents sold was grossly unjust and inadequate, and if the question is justiciable that would give a ground for setting the sale aside. I assume that is one of your primary contentions, is it not?

MR. ANDERSON: Yes, sir. Your Honor has not quite stated it, primarily. The first contention is that, owing to the relationships of the parties the sale or alleged sale, regardless of consideration, was void *ab initio*.

THE COURT: There is a difficulty. I can understand that is a legal question, and one that could be raised and properly could be raised ordinarily and, I presume, proper to be raised here. But I have some difficulty on that point and I wondered if I had misunderstood you. If the purchase price was adequate, then I just wondered whether I had misunderstood you or had understood you, that the United States was pressing to set aside the sale although the purchase price was adequate.

MR. ANDERSON: I was undertaking to state my legal position, as your Honor asked me for my legal premise. First, as a matter of law the sale was void on account of the relationships of the parties and their interests on both sides; second, the purchase price, leaving out the question of the relationship of the parties, was wholly and grossly inadequate, and therefore the Government of the United States—though its policy in that regard is something I have not anything to do with, since it has been directed by people above me—deems it its duty to set aside this sale, providing the Court so adjudicates, and recover these patents, and put them into the custody of the United States, to be held by the United States and disposed of as Congress may direct, in that event to be sold for an adequate consideration.

THE COURT: If I understood you, the plaintiff desires that this sale be set aside on any grounds which may be available, without regard to whether the price received was adequate or inadequate.

MR. ANDERSON: Undoubtedly. The reasons behind the institution of this suit do not concern me, but the plaintiff is here asking the decree on any legal ground upon which it can get that de-

cree; because, as stated by the Supreme Court in the Beebe case, it deems itself charged with the duties and obligations which, whether it be right or wrong, it deems to have been violated. Second, because this property is of a value very far in excess of the value paid, and therefore it is entitled to that for the purposes contemplated by the treaties. That is the first.

So that involves two questions—the relationships of the parties, their interest in the subject matter in their various relationships, and the second question of whether the consideration was adequate. May I just make this suggestion, to make it clearer to your Honor? There are any number of suits in the United States which have been sustained by the Supreme Court of the United States, among them United States v. Beebe, which is the leading case, in which the Government has brought suit to cancel a patent fraudulently obtained, to the public lands, although it had granted and patented the lands to another patentee, and in the event of the success of the suit the lands would go to the second patentee. It has been sustained by the Supreme Court upon the ground that the Government is trustee of all the people and owes a public duty with respect to public lands, and if that duty be violated it is its duty to maintain a suit, even if it receives no material benefit from the suit. But this is a question going to jurisdiction only, and does not concern me as long as the Court has jurisdiction.

THE COURT: Nor me either.

MR. ANDERSON: But, in the second place, the Government not only contends that its duties and its position as trustee for this property have been violated and therefore it must assert its rights

and obligations as trustee, but it claims that the property was disposed of for a grossly inadequate consideration, and therefore the Government, as the primary party in interest, or the people, have a very large interest here, of a material character.

THE COURT: I do not suppose you can help me much so far as the viewpoint of the price is concerned; but is there anything in the Trading with the Enemy Act—I have not re-read it—requiring the Americanization of the chemical industry or the sale of the patents to Americans?

MR. ANDERSON: There is nothing in the world requiring the Americanization of the chemical industry. There is the use of no such language. But if the sale takes place, then the terms of that act do require (I can turn to them if your Honor desires) that it shall be sold to certain persons that are qualified to buy, and that is, to American citizens. Perhaps it is as well to get that clear. Section 12 is the section providing for the sale.

Section 12 provides that the sale shall be a public sale, and so forth, "provided that any property sold under this act, except when sold to the United States, shall be sold only to American citizens."

THE COURT: That is what I had reference to.

MR. ANDERSON: "At public sale to the highest bidder unless the President in the public interest otherwise directs." Now, it may be that that is not in this case. It may be that the President might have been able to authorize the sale to a neutral or one of the allies of the United States. I do not know. That is not involved in this case, and I have not considered it.

THE COURT: No, that is not involved. Have

you read this book that was put in evidence, entitled "The Riddle of the Rhine"?

MR. ANDERSON: No, sir.

THE COURT: There is a paragraph here which interests me, because it seems to me it is important to the consideration of the purchase price. It is by the author of the book in the preface:

"Further, my association with the dye industry, since commencing this book, leaves me with a deep conviction of the critical importance for disarmament, of a world redistribution of organic chemical production. It is inevitable that such a step should benefit the growing organic chemical industries of countries other than Germany, but this issue need not be shirked. The importance of the matter is so vital that it eclipses all reproach that the disarmament argument for the maintenance of the dye industry is used on selfish grounds. Such reproach cannot, in fairness, be heard unless it destroys the case which we have established. We are faced with the following alternatives. Safety demands strong organic chemical industries or cumbersome and burdensome chemical warfare establishments. The stability of future peace depends upon the former, and the extent to which we must establish, or can abandon, the latter depends entirely on the activity and success of those whose special duty it is to organize against war."

That is either right or wrong.

MR. ANDERSON: That is an opinion. I do not know who the gentleman is that wrote that book.

THE COURT: It advances a theory; I do not think of it as a fact. Now, whether in the sale of these patents that theory had a place or had a right to have a place in the minds of those selling, is it your contention that the stability of future peace and the protection of American welfare had no place in the terms or the conditions under

which the patents were sold by the Alien Property Custodian?

MR. ANDERSON: Yes, sir. I will answer your question directly, first. I want to refer to that. I do not want to interrupt your Honor.

That gentleman's opinion may be valuable or not; but I concur that the development of the chemical and dyestuffs industry in the United States—my personal opinion, now—is a very desirable thing, and I would do any legitimate thing to that end if I were in Congress.

But upon what possible theory—and this is answering your Honor's question—it can be contended, or even suggested, that the Alien Property Custodian can have the power or the right to consider a question of that kind and put his judgment in the place of Congress is beyond my conception. Now I have answered your Honor's question. I do contend that it has absolutely nothing to do with it, and if he considered it, he was engaged in an illegal thing.

THE COURT: Then the Government's position is that it denies that those authorized to make the sale of alien property during the war could take into consideration the future welfare, commercial or military, of the United States?

MR. ANDERSON: They could take it into consideration in selecting the purchaser, they could take it into consideration in refusing to accept a bid, in the personnel; but when it came to selling property, they were handling a trust fund, the highest trust known to the law, that of property in charge of a government, of an alien, and it was their duty to handle it in accordance with the laws of trusts and leave the policy on the question to be fixed by Congress. Their duties were fixed by the terms of the Trading with the Enemy Act and

they could not go outside of it or consider anything outside of it.

THE COURT: No doubt about that.

MR. ANDERSON: That being the case, what have they got to do with fixing the policy of the United States? I do not mean to ask your Honor that question.

THE COURT: That is going just a little farther than I had in mind. I assume both sides contend that there is no power vested in the Alien Property Custodian or in any other Government officials, with respect to these patents, save that vested by the Trading with the Enemy Act. I assume that is agreed on both sides. That is probably about the only place you agree.

Now, in determining whether the value is the price received, assuming for the purposes of this discussion, that it is subject to judicial review, or in determining whether the value was shockingly inadequate, it seems to me at the moment that it depends in large measure upon whether the future or the military welfare of the United States could be considered at all in the terms and conditions of sale of those patents, because it seems to me that has a direct bearing on whether the sale was adequate or inadequate.

MR. ANDERSON: I quite agree with your Honor.

THE COURT: I can readily see that, viewed from the German standpoint, the price of these patents was shockingly inadequate.

MR. ANDERSON: The German standpoint hasn't anything to do with it.

THE COURT: You put on Dr. Holdermann, however, who was a witness, and who was a German,——

MR. ANDERSON: Yes.

THE COURT: And I say I can readily see that, viewed from his standoint, the price was shockingly inadequate. But my difficulty is in viewing it from an American standpoint. If the sole power given was to obtain the highest dollar for those patents, without considering the welfare of America, military or commercial, I concede that is one thing; and if there was no power given by this Act for the Alien Property Custodian or the President to consider at all, although a war was then going on,——

MR. ANDERSON: May I suggest the war was over, sir.

MR. KRESEL: It was not over.

MR. ANDERSON: Not technically; but the President had announced it was over.

MR. KRESEL: On the contrary, there was no assurance but that the war might be renewed the next day.

MR. ANDERSON: All right, I did not intend to start a discussion about that.

THE COURT: Well, the war was not over; and if so, there was no certainty that a new war might not begin at any time between us and some other people; and if I understand the theory of this book, which I did not read wholly, but I glanced through it yesterday in large part, it advances some theories which it seems to me make very clear the great and immediate importance of manufacturing plants—I want to get away from the words chemical or dye industry, because they are open to a double meaning in this case—make very clear the necessity for the development of the chemical sciences for the future preservation and protection of America. Now, if that can be considered at all in the selling price or selling con-

ditions, because price is an instrument of conditions, then I can understand that we pretty nearly do not need any testimony.

MR. ANDERSON: Your Honor has reached exactly the view that I reached in this case. In the first place, with reference to that book, if your Honor please, I shall very earnestly contend, as I contended when these books were introduced, that they do not prove any facts at all.

THE COURT: I agree with you absolutely.

MR. ANDERSON: Now, then, if they do not establish any facts, what they contain in there is nothing except the fact that the Chemical Foundation sent them out. That is all they show.

THE COURT: They contain——

MR. ANDERSON: They either show facts or not facts.

THE COURT: As to the Alien Property Custodian's report, you admit the facts stated in there to be facts.

MR. ANDERSON: In the Alien Property Custodian's report, yes, sir. I will stand on that.

THE COURT: And as I understand it, many of the theories here start from the Alien Property Custodian's report as a premise.

MR. ANDERSON: Whatever is in the Alien Property Custodian's report, I am perfectly willing to argue this case on. I am not going outside of that.

THE COURT: The strongest facts I found in this book were taken from the Alien Property Custodian's report.

MR. ANDERSON: That is exactly what I want. Your Honor has got exactly to the meat in this case. Counsel and I have run on parallel lines in introducing evidence to prove something which I think we could probably have sat down at a table

and agreed on, as your Honor stated the other day.

The meat of this case, as I have undertaken to make clear a number of times, is in the principles of law to be applied to it. In my judgment, this case can be decided on the bill and answer, the admissions of the answer. I stated before the trial that that could be done and I so stated during the trial. But we have gone to trial and we have put in all the evidence we had in our possession—it is not all, because there are tons of it—that we thought would throw any light on this situation.

It is my opinion that a very large proportion of the evidence on both sides, your Honor will reach the conclusion, has no material bearing on the decision of the essential and controlling points in this case. But we can not anticipate that. We have to prove every kind of a theory.

Counsel and I differ absolutely on this point. I take the position—and I might as well make it clear. They know it and I want to make it clear to the Court—that while the Alien Property Custodian had the power of sale, it was his duty to sell so as to get the fair value of the property. Not the last dollar, perhaps; because no trustee is required to get the last dollar. He has to use reasonable judgment and discretion to get the fair value of the property. He could not be in the position of buyer and seller at the same time nor could the relation of the parties be so involved that there would not be a clear-cut arms-length dealing. He could not impose conditions upon the property before it was sold, which, though they may have been in the public interest——

THE COURT: And even though the future independence of America may have depended on it?

MR. ANDERSON: Absolutely. That is in the hands of Congress and not the Alien Property Custodian.

THE COURT: Unless Congress delegated that power to the Alien Property Custodian.

MR. ANDERSON: Then you get back to another question. I will put it this way. If the contention as to the construction of this Act and the powers of the Alien Property Custodian, contended for by the distinguished counsel for the defendant, are sound and will be sustained by the Court, then the Alien Property Custodian has taken over all the functions of the Government including the general staff, Congress, and everybody else, and has not only determined the policy and the future welfare of the United States but has taken control of the preparation for future wars; and if there is anything of that kind in the Alien Property Act, I can not find it, or any suggestion of it. So we differ fundamentally on that.

THE COURT: I will hear you, Mr. Kresel, in a minute.

MR. KRESEL: I only want a few words.

THE COURT: If I understand the issues between you, the basic issue between you is here that the defendant contends that in the performance of the duties of the offices created under the Trading with the Enemy Act, and the exercise of the powers of the President and the Alien Property Custodian under that act, they had a right to take into consideration the future military welfare of the United States of America in the sale of the patents.

The position of the Government of the United States now is that in such a sale all the Alien Property Custodian had to do was to hold the patents or sell them for their full value.

MR. ANDERSON: Fair value.

THE COURT: From what standpoint? To whom? Because I can not conceive that there could be an American purchaser of those patents who would pay or could pay an amount equal to the value that they had for their German owners prior to the war. Can you?

MR. ANDERSON: I doubt if an American would have paid that. In so far as they controlled imports, they would be enormously valuable. But in so far as manufacture is concerned, they had less value perhaps to the American manufacturer than to the German manufacturers, because the Germans had the plants.

THE COURT: If these were sold just to control imports and that is established, that would be a fact of interest.

MR. ANDERSON: If your Honor please, my position is perfectly simple. If these gentlemen could have sold these patents as they sold them, they could have sold the whole business for one dollar, although they might have been worth two hundred million dollars.

THE COURT: To whom?

MR. ANDERSON: To anybody in America.

THE COURT: If used wholly without regard to, or sold under conditions which would have given a patent monopoly.

MR. ANDERSON: That is right; although we are not discussing the monopoly phase now.

THE COURT: But you have to consider the monopoly phase in connection with value.

MR. ANDERSON: I will. But my contention is this: If the contention of counsel is sound, that they had a right to take into consideration the commercial welfare of the United States—and I will say that in the order of Mr. Polk stating the

reasons in the public interest, there is no reference to that—if they had a right to take into consideration the commercial welfare of the United States or the industry so-called affected by these patents, then they could consider it to its full extent. That would mean that they could confiscate these patents and turn them over to the industry, because it would benefit America. My contention is that they had to make a fair sale of these patents and that they had no power of confiscation. That is where we differ.

THE COURT: If I understand the contention of the defendant, it is that the commercial welfare of the country, with respect to the chemical and dye industry, is inevitably connected with the military welfare of the country and that the commercial welfare is an underlying factor and the greatest possible protection from a military standpoint. That is their contention.

MR. ANDERSON: I did not know that the Alien Property Custodian was conducting either. But that may be. It may be I was wrong.

THE COURT: I think I see more clearly than possibly heretofore where you differ. I will hear you, Mr. Kresel.

MR. KRESEL: I have only a few words, your Honor. I am groping as much as your Honor is groping to see just what the contention of the Government is and I now understand it to be this: That it was the duty of the President and the Alien Property Custodian to sell this property at a fair price; and while the Government does not define the word "fair," I understand it to mean the full price. And, that the Government, that is, the President and the Alien Property Custodian, in making such sale had no right to consider the military safety of the country.

That leads to this conclusion: that if the President could get only ten dollars for them and protect the country from a military standpoint, he had to decline that because somebody stood ready to pay one hundred dollars for them and the military dependence of the country again be on Germany. I understand that to be the Government's contention.

MR. ANDERSON: As usual, Mr. Kresel misunderstands my contention.

THE COURT: Won't you re-state it, because I got that impression, Colonel Anderson.

MR. KRESEL: You see, even the Court misunderstood you.

MR. ANDERSON: I am a little surprised at the Court's misunderstanding. I am not at all surprised at Mr. Kresel's misunderstanding, because counsel on one side usually view the language of counsel on the other side in the light of their own views.

THE COURT: Mr. Kresel gives an extreme illustration of it, but I do not see how you can avoid that conclusion.

MR. ANDERSON: I thought I had stated it a good many times, but I may not have been clear. I will try to state it this way:

The Government's contention is that the President had nothing to do with the sale of this property or the price obtained. That is at the outset. We differ entirely. We contend that the power of sale was vested in the Alien Property Custodian and not in the President; that the only power of the President in connection with it was that of modifying, by his personal acts, in his judgment, for reasons stated in writing, and those reasons only, which must be stated, such as the method of sale and the other matters

which are set forth in the Act. That is the sole power of the President.

If, for any reason, the sale being made, the conclusion was reached that the bid should not be accepted,—and when I say "sale being made," I mean the offer being made, before confirmation—then the President had the further power, by stating his reasons in the public interest in writing, to set aside that sale. But there he stops. Then the Alien Property Custodian had the power to re-sell or not to re-sell as he saw fit.

There is no obligation in this Act to sell this property at all. It was in the control of the Government of the United States. The Government had a right to use it any way they saw fit and settle that at the Peace Conference and never pay a cent for it if it wanted to. It had the right, by Act of Congress, to confiscate it. It would have been violating a practice of 200 years to have done it.

Since there was no obligation to sell, the public welfare and safety of the United States was not involved. It was not in any risk, because the Government of the United States had these things in its hands and it is just as capable of dealing with the public welfare of the United States as a private business corporation. At least, it must be conclusively presumed to be so by a Court. Then, why sell? That is the first point.

But if the Alien Property Custodian did undertake to sell, as to which there was no obligation whatever, and did undertake to remove this stuff from the control of the Government itself, and put it in the hands of a private owner, however good his motives and however broad the purposes

of the private owner, then he must consider his trust and get the fair value for the property.

If he undertook to sell, reached the conclusion that it was wise to sell and undertook to sell, then it must be a sale and not a gift.

If he felt that the acceptance of the offer of the purchaser or the character of the purchaser or the conditions surrounding the proposed purchase were such as to endanger the welfare of the United States, he still had a position which by analogy may be called *locus penitentiae;* to go back and have the offer rejected and still keep the property in the hands of the United States.

But I do not know anything in the law of the United States or in the history of the United States that justifies or authorizes the officers of the Government to turn over to a private concern the property in the possession of the United States in consideration of the undertaking by that concern to promote the welfare of the United States. That is vested in Congress by the Constitution.

That is my position and that is not what Mr. Kresel stated, by a lot.

THE COURT: It seems to me you differ from him on one particular; and that is that you substitute the Alien Property Custodian for the President. What is the other point?

MR. ANDERSON: The other is simply this: that I contend there was no obligation to sell at all; but if he did sell, he had to make a fair sale. You could not consider the turning over of this property in the possession of the United States in the public interest, because the protection of the public interest could not be a consideration, because the protection of the public interest is primarily vested in the United States already and can not be a consideration for a sale by the United States.

If I have something, how can it be a consideration to me that somebody else will undertake to give me that benefit? I have got it already. The United States Government has complete power to protect the interests of the United States, commercial and military.

THE COURT: No, it has not, Colonel Anderson. Unless it is elaborated in the Alien Property Custodian's report, which I have not read—I have heard you and Mr. Kresel read portions of it and portions of it are quoted in the book which I did read—one of the theories there advanced is that in order that there may be full military protection, the chemical science must be developed through the commercial agencies so that there will be potential arsenals in time for a future war. If that theory is sound, and if I recall it, that is one of the theories of the Alien Property Custodian's report, then does that inject a new phase into the situation?

MR. ANDERSON: I would like to answer your Honor's question on that. I would like very much to do it because you have gotten me to one of the points that interest me in this case.

If that theory is sound—and for the purpose of this discussion I am willing to concede that it is sound, although obviously the Government of the United States can build up its own armament plants—Congress could put an embargo at the ports and prevent the importation of a single thing in competition with American manufacture. It could subsidize these plants in that interest. It could confiscate these patents and turn them over, every last one, to American industry and to anybody that wanted to use them. It could repeal every right under these patents, by virtue of the power of confiscation and settle it at the Peace table.

But to say that an officer of the Government of the United States because of the interests of the United States can ruthlessly confiscate property is to make exactly the same argument that the Germans made at Belgium, the argument of necessity. And if the United States fought this war for that, then we would like to know it.

THE COURT: Do you contend that the amount that was received for these patents fixed absolutely the amount which the Executive and legislative departments of the United States may pay Germany at the Peace table or reparations conference?

MR. ANDERSON: I suppose they could give Germany, as they did Spain for the Philippines, most anything they pleased. But it fixes the obligation of the United States.

THE COURT: Regardless of the fact that the United States has acquired a substantial interest in those patents?

MR. ANDERSON: Undoubtedly. If it is a valid transaction, then Germany can not challenge one particle of it. Nor can it anyhow. This is a question between the United States and its own officers and agents and its citizens. Germany has nothing to do with this thing, because it has agreed that it will not challenge it.

THE COURT: We have gotten somewhat away from the question except that the discussion has disclosed that the Government takes the position that it desires these patents set aside on any legal ground which the Bill of Complaint may support.

MR. KRESEL: Whether the price is adequate or inadequate?

MR. ANDERSON: Absolutely.

THE COURT: Whether the price is inadequate, or on any ground where there may be found to be some technical flaw. Consequently, your objection is overruled.

MR. KRESEL: I raise no objection. I want the record to be clear that I raise no objection.

THE COURT: What was the question?

MR. KRESEL: I think the question was answered.

MR. ANDERSON: Before this discussion I had just introduced or read from the report of the Alien Property Custodian, submitted under Resolution of the Senate, January 25, 1922, showing that on March 28, 1919, Colonel McKay was elected a director of the American Trans-Atlantic Company and that the fees he received as such aggregated twenty-eight hundred dollars.

THE WITNESS: Over what period of time, Colonel?

XQ. 1114. Until the date of this report——

A. Part of it he received under Colonel Miller as Alien Property Custodian. Is that right?

XQ. 1115. That is right. So far as this report shows, the date of service began on the 28th of March, 1919, and the date of termination is blank.

A. The date of the report is what?

MR. ANDERSON: It can be assumed to be up to that date.

I next read from page 141 of the same report, under the heading "Botany Worsted Mills", which contains the following statement:

"Board of directors (fee $5,000 per year and expenses):

"Douglas I. McKay, 30 Church Street, New York, elected Mar. 27, 1919. Resigned Mar. 29, 1921," serving for two years.

I next read from the same report, page 227, under the head of "Foreign Transport and Mercantile Corporation":

"Board of directors (fee per meeting $50):

"Douglas I. McKay, 30 Church Street, New York City, elected member of the board March

28th, 1919; resigned October 11th, 1921; total fees received $2,950."

I next read from page 543 of the same report under the heading of "Stoehr & Sons (Inc.)":

"Board of directors (no fee from Mar. 20, 1918, to Sept. 27, 1921; from Sept. 28, 1921, $20 per meeting)."

THE WITNESS: That is under Mr. Miller, though.

MR. ANDERSON: Yes, I know. I am reading the whole thing. I want to do it all.

"Douglas I. McKay, 30 Church Street, New York City, elected President at $750 per year on September 27, 1921." His fees appear to have been $187.50 and for extra services $250. The total of those amounts is $16,187.50.

XQ. 1116. Mr. Garvan, so far as you know, the election of Mr. McKay as stated in the report in March, 1919, to these several corporations is as stated, is it not? You know he was elected a director?

A. I would assume so.

XQ. 1117. You believed that to be true?

A. Certainly.

XQ. 1118. You stated, I believe, that Mr. George Corbett was Vice President of the Central Union Trust Company at the time that he was elected Secretary and Treasurer of this company?

A. I think I was wrong. I think he was Assistant Secretary, later Vice President. I am not exactly sure of the date.

XQ. 1119. And the Central Union Trust Company was one of the depositories of the Alien Property Custodian, was it not?

A. Practically all the banks and trust companies of the country were:

XQ. 1120. No. Answer the question.

A. Yes.

XQ. 1121. He is now your law partner, is he not?

A. He is.

XQ. 1122. When did he become a member of your firm?

A. I could not tell you the date. I think about a year and a half ago.

XQ. 1123. I think you stated yesterday that he continued as Vice President of the Central Union Trust Company after his election as Secretary and Treasurer and director of the Chemical Foundation for about a year?

A. Yes, I think so.

XQ. 1124. You stated that he did not receive any compensation from the Chemical Foundation during that period as I recall it?

A. Yes, until he resigned and had to give his whole time to the Foundation.

MR. ANDERSON: I now read from the report of the Alien Property Custodian submitted to the Senate in response to Senate Resolution of January 25, 1922, referred to the Committee on Printing on April 10th, 1922, at page 94, under the heading of "Beer, Sondheimer & Co., Inc.," a corporation having $1,250,000, all of which was enemy-owned. It appears on page 94 that the fee per meeting for members of the Board of Directors was $100. In that list of officers appears the following:

"George J. Corbett, Comptroller, at $15,000 per annum." The date of his election is apparently up higher.

THE WITNESS: He was elected long before this.

XQ. 1125. November 18, 1919, was it not?

A. Oh, no. I think it was long before. 1918 it was.

XQ. 1126. In 1918 he was elected Comptroller at a salary of $15,000 per annum?

A. He was elected at Mr. Palmer's request. That is how I became acquainted with him.

XQ. 1127. He was then a Comptroller of this company at the time of the organization of the Chemical Foundation and the sale of these patents in April?

A. That is how I became acquainted with him.

MR. ANDERSON: The same report at the same page, shows that his total fees or compensation as Comptroller of that company amounted to $25,564.50.

THE WITNESS: That is for how long a period?

MR. ANDERSON: It does not appear.

THE WITNESS: That was fixed by the Board of Directors of that company, was it not?

MR. ANDERSON: The report does not show.

At page 423 of the same report, under the heading of "National Zinc Co.," whose authorized stock was $400,000 and the enemy-held stock was $5000, appears the folowing entry:

"George J. Corbett, Treasurer ($1,500 per annum, paid by Company)——$2,830.46."

At page 44 of the same report, under the heading of "American Transatlantic Company":

"Board of directors (fee per meeting, $50.)"

It appears that George J. Corbett was elected a director on December 21st, 1920, and resigned on May 10th, 1921; fees $200.

At page 218 of the same report, under the heading of "Farbwerke-Hoechst Co.:"

"Board of Directors (fees per meeting, $20.):

"George J. Corbett, Central Union Trust Co., New York, elected Director March 11, 1919."

Date of resignation not stated. Fees $60.

At page 227 of the same report, under the heading of "Foreign Transport and Mercantile Corporation," it appears that the directors' fee per meeting was $50; that George J. Corbett was elected a director December 21st, 1920, and resigned April 26, 1921; fees $250.

The total of the amounts so stated was $28,904.96.

XQ. 1128. Can you turn to your books and show what was the compensation received by Mr. Corbett from the Chemical Foundation and the date on which his compensation began and the date on which his compensation terminated?

A. I cannot put it in now. I will put a slip in.

MR. KRESEL: We will get that for you, Colonel.

XQ. 1129. In order to get the statement complete, from your accounts as you presented them here yesterday, I have caused to be made up a summary or total and it appears that his compensation as an officer of the Chemical Foundation began about July 1921, and ended when he resigned as Vice President, which was about what date, do you recall?

A. I cannot recall.

XQ. 1130. And that the total compensation he received as an officer of the Chemical Foundation was $23,125?

A. Yes, sir.

XQ. 1131. I state that on the record subject to your correction.

A. He must have served about a year and three months under salary, because he served at the rate of $15,000 a year. For the first two years, he got nothing.

XQ. 1132. Then he got $15,000 a year?

A. Then, when he devoted his entire time to it and resigned his $18,000 position with the trust company

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to do it, he got $15,000 a year for a year and a quarter. When he first came he got nothing and he has given his evenings and time since for nothing.

MR. ANDERSON: It apears that his compensation was from October 1st, 1920, to some date in 1922 and that it was $23,125, or a total from the Alien Property Custodian's office and the Chemical Foundation of $55,029.96.

XQ. 1133. When Mr. Corbett resigned, you elected Mr. Haaren or the Board elected Mr. Haaren Secretary-Treasurer in his place?

A. Not the Treasurer. Mr. Corbett is still treasurer. Mr. Haaren was elected secretary.

XQ. 1134. Mr. Haaren received a compensation of $5000 a year?

A. Either four or five. Mr. Corbett is still treasurer; does all that work for nothing.

XQ. 1135. Mr. Bannard was chairman of the board of the New York Trust Company, was he not?

A. He was.

XQ. 1136. I read from page 640 of the report of the Alien Property Custodian, 1922, to which I have already referred, the following:

> "From January 11, 1919, when the New York Trust Co. was appointed liquidator, the enemy insurance companies handled to July, 1919, approximately $10,000,000 in securities and $4,000,000 in cash were on deposit to the credit of the 23 enemy insurance companies. For these services during the first six months of 1919, the New York Trust Co. was allowed $30,000 by the then Alien Property Custodian, although correspondence on file in this office indicates that they originally asked for $7,500 per month. The records of this office show that up to March, 1921, the New York Trust Co. have been paid a grand total of $42,070.87 for services as liquidator for the 23 enemy insurance companies and in addition a further sum of $58,670.87 was paid them for services as depositary.

During the two and one-half years as liquidator of the enemy insurance companies, the New York Trust Co. had on daily deposit for the 23 enemy insurance companies an average of $1,465,455 in cash and securities of a value of approximately $20,000,000."

A. Colonel, won't you show what every other trust company in New York had before you argue that Mr. Bannard is corrupt in that?

MR. ANDERSON: I am not going to argue that Mr. Bannard is corrupt, and I do not propose to be put in the position of arguing that anybody was corrupt; but I do insist, since the statement has been made that these gentlemen had no interest, that it is perfectly legitimate for me to show their interest.

THE WITNESS: You think because the trust company had——

THE COURT: Do not argue with Colonel Anderson.

MR. ANDERSON: I am not charging anybody with corruption. I am merely showing that they had an interest. It may have been an entirely legitimate interest. I do not deny that they might have been working in a legitimate manner, so far as their interest was concerned; but I do want to show their interest for what it is worth.

XQ. 1137. The New York Trust Company was one of the chief depositaries of the Alien Property Custodian, was it not?

A. One of the depositaries. I think the others were all bigger than the New York.

XQ. 1138. I next read from page 157 of the report of the Alien Property Custodian, the bill of Judge George L. Ingraham to the Alien Property Custodian, dated January 12, 1921, which, in view of the circumstances, I shall read in full, that it may show the amount of service rendered:

"Matter of Stoehr v. A. Mitchell Palmer, as Alien Property Custodian and individually, Francis P. Garvan, as Alien Property Custodian and individually, James N. Wallace *et al.* To professional services in the above-entitled cause since the commencement thereof on Dec. 2, 1918, to date, including among other services the following: Examination of the first bill of complaint, the bill of complaint in action No. 2, the action which superseded action No. 1, the supplemental bill and the demand annexed thereto; conferences with the Alien Property Custodian and his associates; conferences regarding the cause generally; conferences with Mr. Larue Brown, Assistant Attorney General, with Col. Francis G. Caffey and Mr. Earl Barnes, of the office of the District Attorney for the Southern District of New York, regarding the motion for an injunction; attendance before Judge Knox and argument of motion in opposition to plaintiff's motion for a preliminary injunction; services in connection with the order of the court entered thereon; stipulating on behalf of the Alien Property Custodian that there would be no sale pending the disposition of the suit, no injunction being entered by the court; services in connection with the plaintiff's motion to file supplemental bill; services in preparation of answer of A. Mitchell Palmer as Alien Property Custodian and Francis P. Garvan as Alien Property Custodian; conferences with Mr. Lee Bradley as counsel for A. Mitchell Palmer, as Alien Property Custodian and Francis P. Garvan as Alien Property Custodian; many conferences with Mr. John Quinn and his associates as solicitor and counsel for the defendant Stoehr & Sons (Inc.) and its directors and the defendant Botany Worsted Mills and its directors; examination of authorities in

connection with the merits of the case; many conferences in regard to the setting of the case for trial; repeated appearances in court with other counsel in efforts to have the case set for early trial; conferences extending over many days with Mr. Lee Bradley, Mr. Quinn and his associates, counsel for all the other defendants, United States Attorney Caffey and Mr. Barnes, of Mr. Caffey's office, on the facts and the law, as part of the preparation of the trial of the case; attendance at and participation in the trial of the case and services thereon covering most of two weeks; preparation of brief on behalf of Alien Property Custodian and reply brief; consultations regarding opposition to motion for a stay; attendance in court and argument on behalf of the Alien Property Custodian in opposition to motion for a stay; and services in connection with the furnishing of a bond pending the appeal. Conferences in regard to the the advancement of the cause by the Supreme Court; conferences with Mr. Quinn and his associates regarding the filing of the transcript in the Supreme Court; conferences with Mr. Quinn and his associates regarding the brief and the facts to be presented in the Supreme Court; preparation of the brief on behalf of the Alien Property Custodian in the Supreme Court; examination of the brief for counsel for the appellant in the Supreme Court; reexamination of the law and the authorities in the light of the facts developed on the trial, and preparation for the brief in the Supreme Court; conferences with Solicitor General Frierson in Washington preceding the argument; attendance in Washington on the argument and final submission of the case in the Supreme Court; the work on the brief, examination of the law and facts neces-

sary therefor, conferences with Mr. Quinn and his associates, attendance in Washington, occupying the larger part of a month of counsel's time; and for all other services in the above cause down to and including the argument and final submission of the case in the Supreme Court, in full to date $30,000.00

Disbursements:

1920.

June 17. Paid Sidney C. Ormsby Co. for stenographic minutes of the trial, as per detailed receipted voucher annexed, including a daily copy of the minutes of the trial and one-third of the cost of the Court's copy in accordance with the practice 190.40

Nov. 8. Paid Sidney C. Ormsby Co. for transcript of the arguments of counsel, 1,027 folios at the customary rate, as per receipted voucher of Sidney C. Ormsby Co., hereto annexed 308.10

Stenographic work and petty disbursements to date 333.23

Total ..... 30,831.73"

MR. ANDERSON: And I wish at this point to state again on the record that I am not attacking the motives or propriety of the actions of these gentlemen in any way, but I am merely showing interest in response to the question raised by counsel.

XQ. 1138. (Continued.) Now, Mr. Joseph H. Choate was general counsel of the Chemical Foundation on the eighth day of March, 1919, was he not?

A. Yes, sir.

XQ. 1139. I see in the accounts which you submitted in evidence on Tuesday an item of $11,574.84 of organization expenses. Do you know of what that item was made up?

A. No. I will get it for you and put it in in detail.

XQ. 1140. Will you get your counsel to show it to you now and put it in at this point?

(Paper produced by counsel for the defendant.)

XQ. 1141. Will you kindly file in evidence a statement showing in detail the items making up this item of organization expenses?

A. Certainly.

MR. KRESEL: We have it here, your Honor, and we have no objection to its going in.

THE WITNESS: Do not tear it out.

MR. KRESEL: No, I will not tear it out.

THE WITNESS: That is the only copy we have left.

MR. KRESEL: Of course, your people, Colonel Anderson, have had it right along.

MR. ANDERSON: I know; but I just want an answer to the question.

THE COURT: Why not give it to the stenographer and have him copy it into the record right at this point?

XQ. 1142. You have presented in detail the statement which you have referred to, and I will therefore ask the stenographer to copy it on the record as your reply to this question. Is that satisfactory to you?

A. Certainly.

(The statement presented by the witness is as follows):

"EXHIBIT A.—SCHEDULE 6."

Sheet No. 1.

ORGANIZATION EXPENSE.

Date.	Name.	Detail.	Amount.	Total.
1919.				
Mar. 20.	Secretary of State	State Tax	$50.00	
		Indexing	2.00	
		Certifying Cert. of Inc.	4.50	
				$56.50
	Recorder of Deeds	Recording Cert. of Inc.	5.50	
		Notary Fees	.50	
		Revenue Stamps	.30	
		Messenger to Dover, Del.	4.30	
		Telephone & Telegraph	.70	
		Stock Ledger, Stock Transfer Book	7.00	
		Corporate Seal	3.00	
		Minute Book	10.00	
				31.30
Apr. 5.	Brown, Green Co.	8 Books of Preferred & Common Stock Certificates		271.00
Dec. 31.	Joseph H. Choate, Jr.	Legal Services		10000.00
1920.				
Apr. 29.	Brown, Green Co.	Printing 1000 Trust Certificates		168.00
June 15.	Central Union Trust Co.	Imprinting 1 line on 250 Stock Certificates	5.00	
		Federal Tax Stamps on 840 shares preferred stock at 5¢ each	42.00	
		292 shares common stock at 5¢ each	14.60	
				61.60
June 25.	Geo. M. Fisher, State Treas.	Annual Franchise Tax for 1919		43.19
July 7.	Evarts, Choate, Sherman & Leon	Application fee for authority to Corp. to do business in State of New York		11.00
15.	Kalamazoo Loose Leaf Binder Co.	2 Full Latigo Current binders with R. M. lettered four lines gold and indexes		55.80

Date.	Name.	Detail.	Amount.	Total.
23.	Evarts, Choate, Sherman & Leon	Balance of application fee to do business in New York State—Total Fee $52.00		41.00
Aug. 11.	Central Union Trust Co..	Federal Tax Stamps on 2371 Shares Preferred stock at 5¢ each		118.55
26.	Comptroller of State of New York	Capital Stock Foreign License Fee		536.13
		Carried Forward ..		11394.07
		Brought Forward ..		$11394.07
Oct. 22.	Albert Hepp & Co.	1—200 Page Cash Book..	$3.00	
		250—Triplicate Sets Transfer Sheets—Voting Trust Certificates Common Stock—#1 to 250 and Preferred Stock #1-250	60.00	
		100 Sheets Carbon Paper	4.00	
		4 Permanent Binders for Transfer sheets of which 2—Common—2 Preferred	22.00	
		2 Temporary Binders for Transfer sheets of which 2—Common—2 Preferred	8.00	
		1000 Ledger Sheets each Voting Trust Certificates for Common and Preferred Stock	45.25	
				142.25
Dec. 21.	Lloyd Van Doren	R. R. tickets to Wash., D. C.		38.52
				$11574.84

XQ. 1143. Mr. Garvan, what has been Mr. Choate's compensation as general counsel of the Chemical Foundation?

A. I think in the four years and a quarter it has been $10,000.

MR. KRESEL: A year?

THE WITNESS: No, no, the entire compensation.

XQ. 1144. In addition to his compensation in the organization of the company?

A. I think that is all he has ever received.

XQ. 1145. Haven't you proved other compensations on your books?

A. I will make positive before the recess, but my impression is that all he has ever had from the beginning is $10,000.

XQ. 1146. I believe you testified that Mr. Ramsay Hoguet was patent counsel of the Alien Property Custodian and was also appointed or elected patent counsel of the Chemical Foundation on March 8th; is that right?

A. Yes, sir.

XQ. 1147. Mr. Garvan, do you know what compensations Mr. Hoguet received from the Alien Property Custodian and from the Chemical Foundation during his service to each?

A. I do not. I think for the services of his firm, anyway.

XQ. 1147-a. Well, he was a member of what firm?

A. Emery, Varney, Blair & Hoguet.

MR. ANDERSON: In order to shorten the examination, I offer in evidence a paper consisting of four sheets, entitled "Statement of Fees and Compensations paid to the firm of Emery, Varney, Blair & Hoguet by A. P. C. for dates stated, as shown by A. P. C. Report of 1922." It has the headings showing name of company, page of Miller Report, date and amount. I offer it subject to

examination and verification by counsel, as Plaintiff's Exhibit No. 613.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 613." (*See Exhibits, Vol. III, page 1480.*)

XQ. 1148. Mr. Garvan, can you from your books and with the assistance of your accountant now tell me the aggregate amount of legal fees paid to the firm of Emery, Varney, Blair & Hoguet by the Chemical Foundation, showing the first date and the last date of such payments?

A. I can put in an itemized statement before we resume this afternoon.

XQ. 1149. Will you hand the statement to the stenographer and insert it on the record as your answer?

A. Yes, sir. (Statement to be furnished by witness.)

XQ. 1150. Who was Mr. W. F. Keohan?

A. Mr. W. F. Keohan was a newspaper man who worked in Washington. At the time I took him he was working on the Liberty Loan drives.

XQ. 1151. He was publicity agent of the Alien Property Custodian in the Bureau of Investigation from January 1, 1919, was he not?

A. Yes, sir.

XQ. 1152. Do you recall what salary he received?

A. I do not know. I think $4,000 or something like that.

XQ. 1153. The report shows that he——

A. Whatever the report shows.

XQ. 1154. The report shows that he first received $3000 and afterwards $4000. Would you say that that was right?

A. Why, certainly.

XQ. 1155. Mr. Garvan, after you assumed certain duties in connection with the Department of Justice,

as to which you testified on Tuesday, Mr. Keohan was appointed a special agent of the Department of Justice, was he not?

A. I don't think so. I would not be clear as to that.

XQ. 1156. How long did he continue as the publicity agent——

A. He helped do the publicity work in relation to the Bolshevik fight that the Department of Justice carried on. Now, I am not sure how his compensation was.

XQ. 1157. Did he continue as publicity agent of the Alien Property Custodian?

A. I would have to look that up, Colonel. I would not be able to tell you.

XQ. 1158. By reference to the minutes of the Chemical Foundation for October 2, 1921, it appears that at that meeting Colonel McKay resigned as vice-president, Mr. Corbett's salary was fixed at $15,000, and Mr. Keohan was appointed as a representative of the Foundation in Washington, the statement contained in the minutes being: "Mr. Keohan has represented the Chemical Foundation at Washington for the past year and a half and has done valuable work for the Chemical Foundation in the past." Is that a correct statement of the situation, so far as you know?

A. Well, his business when he came to the Foundation was in relation to our relations with the different departments. We were working with the Agricultural——

XQ. 1159. I mean he had been representing the Chemical Foundation for a year and a half when he was elected to the head of the Washington office.

A. I can get the date. I do not remember whether it was a year or a year and five months, but that is approximately correct.

XQ. 1160. He was then appointed head of the Washington office or Washington representative of the

Chemical Foundation at a salary of six thousand a year, as stated in these minutes?

A. Yes, sir.

XQ. 1161. Does that accord with your recollection?

A. Yes. He was the liaison officer between the Foundation and the Government.

XQ. 1162. He is still manager of the Washington office, is he not?

A. Yes, sir. We have no office; he has desk room in an office there.

XQ. 1163. He is the representative of the Chemical Foundation in Washington?

A. No, he is not the representative. He represents the Foundation in particular work.

XQ. 1164. What is the particular work

A. He has no authority to represent them. In working with the Chemical Warfare Service, National Research Council, Department of Education, Tariff Commission, Department of Commerce—in fact every department of the Government except the Department of Justice.

XQ. 1165. Have you a statement in your accounts that you have presented here, showing the expenses and detail of the Washington office?

A. Certainly.

XQ. 1166. Would you present it?

A. I can get it for you just as rapidly as it can be separated out.

XQ. 1167. I just want that report; I do not call for the original book.

MR. KRESEL: We produce three reports, and the fourth one is now in the possession of the stenographer, who has just taken it out to make a copy of what was put in.

XQ. 1168. Can you by reference to those reports show me the details of the expenses of the Washington office?

A. It will take some time. Those reports are made up for different periods, the first is for a year and a half, I think, the next for six months, and then the next six months up to January first. But I can make you up a detailed account in an hour.

XQ. 1169. I would like very much to have that made up, if you can do it, showing the details.

A. Certainly.

MR. KERSEL: We will do it.

MR. ANDERSON: I will take it up later in connection with the accounts.

XQ. 1170. Who is Mr. W. W. Buffum?

A. He was an accountant in the Alien Property Custodian's office.

XQ. 1171. Do you remember the period of his service?

A. I do not.

XQ. 1172. Did he serve as long as you were there?

A. I think so.

XQ. 1173. He was there during the entire period you were Alien Property Custodian?

A. I think he was there before I was there.

XQ. 1174. Before you were there?

A. I think so.

XQ. 1175. And served after you left?

A. Yes, sir.

XQ. 1176. Is he now connected with the Chemical Foundation?

A. He is.

XQ. 1177. When did that connection begin?

A. That I could not tell you. I can get the exact date.

XQ. 1178. Could you give me the date that he resigned from the Alien Property Custodian's office and the date that he became connected with the Chemical Foundation?

A. I will get it, certainly.

MR. KRESEL: We will give you the date now. Mr. Buffum is right here.

MR. BUFFUM: July 15, 1921.

MR. ANDERSON: And he became connected with the Foundation when?

THE WITNESS: I should say the next day.

XQ. 1179. Who is Mr. J. R. Zimmerman, who was in the office of the Alien Property Custodian?

A. I think he was—

XQ. 1180. Head of the Bureau of Trusts?

A. Head of the Bureau of Filing.

XQ. 1181. Was he not afterwards head of the Bureau of Trusts under you?

A. No.

XQ. 1182. Are you sure of that?

A. Positive.

XQ. 1183. He was in charge of files, then; is that it?

A. The files, yes.

XQ. 1184. Do you know when he resigned?

A. No.

XQ. 1185. Is he now connected with the Chemical Foundation?

A. He is working for us during the preparation of this case.

XQ. 1186. Will you tell us the date when he became connected with the Chemical Foundation and the date of his resignation from the Alien Property Custodian's office?

A. Yes, I think it was three or four months ago when we began to prepare for this case.

MR. KRESEL: Colonel, I understand all that information is in Colonel Miller's report.

MR. ANDERSON: Could you give it to me—because this report is not indexed.

MR. KRESEL: We would be very glad, Colonel, to stipulate all of this matter.

MR. ANDERSON: I know you would.

MR. KRESEL: If you would only ask us to do it.

MR. ANDERSON: Until after the evidence the other day I had not expected to put it in, but after going over the evidence the other day the testimony there would seem to me to require this information.

MR. KRESEL: We will give you that information in a minute.

XQ. 1187. It is stated here that Mr. Zimmerman resigned from the Alien Property Custodian's office June 1st, 1922.

A. Yes.

XQ. 1188. Is it about that time he became connected with the Chemical Foundation?

A. No.

XQ. 1189. When was it?

A. Months later. I think he went into business in Philadelphia. It was when we began to prepare for this case. It is only a few months.

XQ. 1190. When you began to prepare for this case he became an employee of your company?

A. (None).

XQ. 1191. What was the connection of Mr. L. H. Boggs with the Alien Property Custodian?

A. Boggs was a lawyer.

XQ. 1192. Was he not general counsel?

A. I think toward the end Mr. Boggs was head of the Law—yes, I know he was.

XQ. 1193. General counsel for you as Alien Property Custodian?

A. Yes, sir.

XQ. 1194. He is now one of the counsel in this case, is he not?

A. Yes, sir.

XQ. 1195. He has been counsel for the Chemical Foundation in Washington since what date?

A. I think about July first of last year.

XQ. 1196. Was he not general counsel in 1921?

A. I do not think so.

MR. KRESEL: Colonel, we will get you that. Mr. Boggs is right here. Mr. Boggs, Colonel Anderson wants to know when you became counsel for the Chemical Foundation?

MR. BOGGS: October, 1921.

MR. KRESEL: October, 1921.

MR. ANDERSON: I accept that. Thank you very much, Mr. Boggs.

XQ. 1197. With what firm is Mr. S. M. Stellwagen connected?

A. Palmer, Davis & Scott.

XQ. 1198. Is that Mr. A. Mitchell Palmer?

A. Yes.

XQ. 1199. Mr. Stellwagen was once an attorney in the office of the Alien Property Custodian, was he not?

A. He was. He was the expert on legislation.

XQ. 1200. On legislation?

A. Yes.

XQ. 1201. Do you know about what time he left the office of the Alien Property Custodian?

A. No.

XQ. 1202. Do you know what time he became connected with the law firm of Mr. A. Mitchell Palmer?

A. I would assume about March 4, 1921.

XQ. 1203. Certainly very soon after the retirement of Mr. Palmer from the office of Attorney General?

A. I think Mr. Palmer began to practice almost immediately.

XQ. 1204. Mr. Stellwagen is one of your counsel in this case, is he not?

A. Yes, sir.

XQ. 1205. The firm of Palmer, Davis & Scott has

represented the Alien Property Custodian in Washington since 1921, have they not?

A. Represented the Alien Property Custodian?

XQ. 1206. I mean the Chemical Foundation.

A. In certain matters.

XQ. 1207. They have been the attorneys for the Chemical Foundation, in certain matters?

A. Certainly. Mr. Stellwagen has, and I assume that carried the name of the firm. He has done the work.

XQ. 1208. He has done the work?

A. Yes.

XQ. 1209. As a matter of fact, they represented the Chemical Foundation in connection with the license to the Navy Department of these patents which you spoke of?

A. He worked with the Navy in the drawing of it. That is, as to the technical details, getting the license numbers, the numbers of the patents and all those things correct.

XQ. 1210. Who is Mr. F. E. Haynes?

A. Mr. F. E. Haynes is a young lawyer.

XQ. 1211. Was he once attorney for the Alien Property Custodian?

A. I am not sure whether he was admitted to the Bar while he was there. He was admitted to the Bar while he was there, I understand.

XQ. 1212. He was in the office of the Alien Property Custodian?

A. Yes.

XQ. 1213. While you were Alien Property Custodian?

A. Yes, sir.

XQ. 1214. He was then connected with the Department of Justice, was he not?

A. He was what?

XQ. 1215. He was for a while connected with the Department of Justice?

A. Yes, sir.

XQ. 1216. That is while you were discharging certain duties in connection with the Department

A. Yes, sir.

XQ. 1217. And he is now one of the attorneys in this case, is he not?

A. No. He is an attorney in my office.

XQ. 1218. He is an attorney in your office?

A. Yes, sir.

XQ. 1219. But he is engaged actively in this case?

A. No, sir. He is in my employ—my personal employ.

XQ. 1220. But he is one of the attorneys in the room in this case and helped in the preparation of this case; is that so?

A. Oh, yes.

XQ. 1221. On Monday Mr. Kresel introduced a report which was made by a man named Edward S. Rogers.

MR. ANDERSON: Am I right about that?

MR. KRESEL: Rogers is the name. I do not recall the initials.

XQ. 1221. (Continued) Claimed to be connected with the Federal Trade Commission, which on the facts before us we admitted he was, at the time—connected with the Federal Trade Commission. Was not Mr. Rogers subsequently employed by the Chemical Foundation, about January, 1922?

A. I am not sure that there was not some one trade-mark matter. I will look that up and find out.

XQ. 1222. You think as far as you can remember he was?

A. I think he charged us only his disbursements, that is all, in some matter that he attended to.

THE COURT: We will take a recess now until one o'clock Eastern Standard Time.

(Recess until 1.00 o'clock P. M. Eastern Standard Time.)

AFTER RECESS.

XQ. 1223. Mr. Garvan, defendant put in evidence on Tuesday a report by Mr. Norton, formerly agent of the Department of Commerce? You recall that, do you not?

A. Yes, sir.

XQ. 1224. In the question on Tuesday, either I in my question or you in your answer, inadvertently referred to him as an agent of the Department of Justice. There was no such person who was an agent of the Department of Justice?

A. No, sir.

XQ. 1225. Do you know where Mr. Norton is now?

A. No, I do not.

XQ. 1226. Do you not know he is employed by the duPonts?

A. I understand he is not and has not been for some years.

XQ. 1227. There was also some evidence put in here as to Captain Dix, of the War Department, in connection with negotiations as to the nitrogen patents. Do you know where Captain Dix is now?

A. I do not.

XQ. 1228. There was also a good deal of evidence of Major A. M. Holcomb, of the War Department. Do you know where Major Holcomb is?

A. I do not.

XQ. 1229. Have you been able to get up a statement from your books of the amounts of fees paid Messrs. Emery, Varney, Blair & Hoguet by the Chemical Foundation?

A. No, I have not.

XQ. 1230. The Alien Property Custodian approved the various payments to counsel and others representing these matters, did he not, during the period of the Alien Property Custodian's office?

A. They were first fixed by the Boards of Directors and then approved by us.

XQ. 1231. Approved by the Alien Property Custodian?

A. Yes, sir.

XQ. 1232. Or, where the service was rendered to the Alien Property Custodian direct, they were of course approved by him?

A. Certainly.

XQ. 1233. You spoke of Mr. Bradley Palmer's connection with this matter. Do you know when he became connected with the A. P. C.'s office?

A. Very shortly after it was organized.

XQ. 1234. My records show March 26th, 1918. That would be about the time, would it not?

A. Yes.

XQ. 1235. And they further show that he was connected with the office as an attorney; is that in accordance with your recollection?

A. Yes, sir, general adviser.

XQ. 1236. Mr. Bradley Palmer was actively associated with you and Mr. A. Mitchell Palmer in connection with the plans for the organization of the Chemical Foundation and the sale of these patents, was he not?

A. I do not know how much part he played in it. I was in New York and he was in Washington. I assume we advised with Mr. Palmer on every important thing.

XQ. 1237. In your evidence before the Committee on Ways and Means, to which reference has frequently been made, at page 244 you say:

"For a month or six weeks Mr. Palmer and myself and Mr. Bradley Palmer and others sought in every way possible to find some way by which we could turn the idea over to the Government and make it efficient in the use and protection of the patents."

Was that true?

A. Undoubtedly.

XQ. 1238. In the same book, at page 272, you testified as follows:

"MR. MOORE: Do you know who drafted that Executive order signed by Frank L. Polk?

"MR. GARVAN: I can give you my best belief, based upon the course of business in the office, that it was drafted by Mr. Mitchell Palmer after consultation with Mr. Bradley Palmer, and, undoubtedly, after consultation with Mr. Hoguet, who was the principal adviser on patents.

"Mr. Moore: Mr. Ramsay Hoguet?

"Mr. Garvan: Yes.

"Mr. Moore: Who is associated with Mr. Choate as counsel of the Chemical Foundation, Inc., of which you are President?

"Mr. Garvan: He is not associated with Mr. Choate, but he is our patent counsel.

"Mr. Moore: And Mr. Ramsay Hoguet, with whom Mr. Palmer probably conferred, as you say, over the drafting of this Executive order by Frank L. Polk, was named as associate counsel with Mr. Joseph H. Choate, Jr.?

"Mr. Garvan: Yes.

"Mr. Moore: Of the Chemical Foundation, Inc., of which you are President?

"Mr. Garvan: Of the Chemical Foundation, Inc., yes. And, furthermore, I think you will find that order received the consulting advice of every big patent lawyer in the country representing these big manufacturers."

Then further on, there was another question:

"Do you still say you do not know who pre-

pared that Executive order signed by Frank L. Polk?

"Mr. Garvan: I have given you my best impression, that it was Mr. Mitchell Palmer, Mr. Bradley Palmer, and Mr. Hoguet."

Is that your testimony?

A. Yes, sir.

XQ. 1239. Do you know who paid the expense of Mr. Bradley Palmer to Paris?

A. Probably the State Department.

XQ. 1240. You do not know?

A. I do not know. He was appointed at the request of the President or appointed by the President.

XQ. 1241. Hold on. I just asked you whether you knew.

A. No.

XQ. 1242. You don't know anything about the request of the President; you did not see the President?

A. I know that the President appointed him.

XQ. 1243. Did you see the President yourself?

A. Did I see the President—what?

XQ. 1244. At that time?

A. No.

XQ. 1245. Anything that you know on that is what people told you?

A. No, I know it from my communications with him while at the Peace Conference, under the official seal of the State Department, through the State Department.

XQ. 1246. With whom?

A. Bradley Palmer.

XQ. 1247. You communicated with Bradley Palmer?

A. Certainly. All communications at the Peace Conference were made through the State Department.

XQ. 1248. No matter who it was?

A. No matter who it was, it had to go through the State Department. If I wanted to cable to the Peace Conference, I had to send my cablegram to the State Department, have it vised there and forwarded to Paris and then the Paris Peace Conference would send the cable here and the part of it that was for my attention would be de-coded by the State Department and sent to me.

XQ. 1249. You also sent some cables to Dr. Herty over there, did you not?

A. Yes, sir.

XQ. 1250. Who paid his expenses?

A. The Chemical Foundation, at the request of the State Department and the Peace Mission.

XQ. 1251. Mr. Garvan, I asked you who paid his expenses; I did not ask you at whose request or how.

THE COURT: Do you want the latter part of the answer stricken out?

MR. ANDERSON: Yes, sir.

THE COURT: Let it be stricken out.

XQ. 1252. Can you state now when he became a member of the voting trust of the Chemical Foundation?

A. Who—Mr. Bradley Palmer?

XQ. 1253. Yes.

A. I had that date yesterday.

XQ. 1254. The minutes of the Chemical Foundation show——

A. Wait a minute.

MR. KRESEL: April 4th, 1921, Colonel.

THE WITNESS: April 4th, 1921.

MR. ANDERSON: April 4th, 1919, according to our records.

THE WITNESS: No, you are wrong.

MR. KRESEL: It is 1921.

XQ. 1255. Mr. Garvan, do you recall whether you communicated with Mr. Bradley Palmer a request to

get a provision in the Peace Treaty expressly ratifying the sale of these patents?

A. No, I do not think I did.

XQ. 1256. You do not recall whether you did or not?

A. No, my communication with him was to get a ratification at the Peace Conference of all our acts, and I do not think it mentioned the Foundation at all.

XQ. 1257. Would you mind just answering this question: do you recall whether you communicated with him requesting him to get a ratification of the particular sale of these patents?

A. The best of my recollection is I did not. I have all my cables. I will look it up.

XQ. 1258. After your appointment as Alien Property Custodian on the 4th of March you continued to seize these chemical and dyestuff patents and transfer them to the Chemical Foundation on the various dates named in the assignments in the record in this case, did you not?

A. Yes, sir.

XQ. 1259. At that time you were familiar with the provisions of the Trading with the Enemy Act, Section 12, as to the holding and disposition of property by the Alien Property Custodian?

A. I was generally familiar with the Act; yes, sir.

XQ. 1260. Were you at that time familar with the provisions of the report of Mr. A. Mitchell Palmer, dated February 22, 1919, with respect to the manner of holding property by the Alien Property Custodian?

A. Yes, sir.

XQ. 1261. At the time you made the several conveyances here involved, were you familiar with the by-laws of the Chemical Foundation which gave to the survivors of the Voting Trustees the power to fill

vacancies and created in them a self-perpetuating body for seventeen years?

A. Yes, sir.

XQ. 1262. As a lawyer you were then and you are now familiar with the duties, obligations and limitations of trustees?

A. Of what trustees?

XQ. 1263. Of any kind of trustees.

A. There are so many different kinds I won't swear I am familiar with all of them.

XQ. 1264. On April 10th, 1919, at the time the principal conveyance was made, and at the time of the subsequent conveyances shown by the record, were you familiar with the provisions of Section 1783 of the Revised Statutes of the United States, which provides as follows:

> "No officer or agent of any banking or other commercial corporation, and no member of any mercantile or trading firm or person directly or indirectly interested in the pecuniary profits of contracts of such corporation or firm, shall be employed or shall act as an officer or agent of the United States for the transaction of business with such corporation or firm, and every such officer, agent or member or person so interested who so acts, shall be imprisoned for not more than three years and fined not more than two thousand dollars."

A. No, I do not think I was. I never heard of it until this minute.

XQ. 1265. Never heard of it until this minute?

A. No.

XQ. 1266. On April 10th, 1919, were you familiar with the plan of sales organization and the rules and regulations of the Alien Property Custodian's office, promulgated by the Alien Property Custodian on June 6th, 1918?

A. Yes, sir.

XQ. 1267. You were, then, familiar with the following provision contained in the order entitled "Plan of Sales Organization and Rules and Regulations," dated Washington, June 6, 1918, as contained in the report of A. Mitchell Palmer, Alien Property Custodian, at page 206:

> "It is necessary that every precaution should be taken to enable properties to be sold fairly and for a proper price, without any possibility of favoritism or undue advantage in favor of any particular purchaser."

You were familiar with that, were you?

A. Certainly.

XQ. 1268. You were also familiar with the provision in those Regulations, Page 209, Section 2, which reads as follows: "Under no circumstances will any person in the employ of or connected with the organization of the Alien Property Custodian be permitted to bid for or purchase any property, or be interested directly or indirectly in any such purchase, or in any corporation or syndicate interested therein. This provision also applies to local representatives and local attorneys in the sales of properties in respect of which they have represented or acted for the Alien Property Custodian."

A. Yes, I was familiar with that.

XQ. 1268a. Do you not know as a matter of fact that on May 2d, 1919, the Advisory Sales Committee refused to approve the sale of the Hackfeldt property at Honolulu, on the ground that one person interested in the purchase had formerly been connected with the Alien Property Custodian's organization?

A. No, that is all gone from my mind at this time.

XQ. 1269. You are familiar with the Bosch Magneto sale, are you not?

A. Very.

XQ. 1270. Do you not know that after the prop-

erty was bid in by the purchaser, the Liberty Securities Corporation was required to retire fom the syndicate because Mr. Bowers, the vice-president of that company, had been an officer of the Bosch Magneto Company appointed by the Alien Property Custodian?

A. I think it was before the bid was made he retired.

XQ. 1271. He was not allowed to participate in the sale, isn't that true?

A. No; he had a money interest in it.

XQ. 1272. Did you not at the time these conveyances were made know that all contracts made by the Government of the United States during the war contained an express provision, as required by law, prohibiting any officer of the United States, or member of Congress, or agent of the United States, from having any interest in said contract or the provisions thereof or the benefits thereof?

A. I did not know that was a specific statute, but I assumed it was the law, naturally.

XQ. 1273. Did you not know that at the time this sale was made and subsequently the laws of the United States prohibited any person from aiding any contractor in making out his bid, advising any contractor, or in any way being interested with any contractor or the person contracting with the Government of the United States, in the transaction of business between the Government and such contractor?

A. I did not know the statute. I assumed it was the law. I knew it was ethics.

XQ. 1274. Were you not at that time familiar with the provisions of Section 6 of the Trading with the Enemy Act, providing as follows:

> "That the President shall cause a detailed report to be made to Congress on the first day of January of each year of all proceedings had under this Act during the year preceding. Such report

shall contain a list of all persons appointed or employed, with the salary or compensation paid to each, and a statement of the different kinds of property taken into custody and the disposition made thereof."

You were familiar with that provision, were you not?

A. Yes.

XQ. 1275. Did you ever submit to the President of the United States or to Congress any report during the term of your office as Alien Property Custodian, which you have testified covered a period of more than two years from March 4, 1919, to March 12, 1921?

A. No.

XQ. 1276. Did you ever make any report to the President or Congress showing a list of persons appointed or employed by the Alien Property Custodian during your term of office, with the salary and compensation of each, and a statement of the kinds of property taken into custody and the disposition made thereof, as provided by Section 6 of said Act?

A. In great part I did. I prepared that whole thing for the Committee on Appropriations.

XQ. 1277. What committee on appropriations?

A. The House Committee on Appropriations.

XQ. 1278. When?

A. Before the date of my testimony there. They were awaiting legislation, and we made the report to Congress showing everything up to Mr. Palmer's time, and it was not considered policy to put the Government to any expense until Congress was ready to take it up, with continuous repetition of printing, and so forth, of what had already been done and what would eventually have to be done properly at the time that Congress was ready to legislate. It was all there, and I said there, we notified every Congressman and Senator that they could get any information in five minutes from our books; they were up-to-date.

XQ. 1279. Did you ever make to the President or to Congress any report giving a list of the patents, trade-marks, copyrights and other property assigned to the Chemical Foundation, or showing the sale thereof or the disposition thereof, or any report showing the seizure thereof, in any way?

A. No.

XQ. 1280. You are, of course, familiar with the provisions of Section 1780 of the Statutes of the United States, providing that "Every officer who neglects or refuses to make any return or report which he is required to make at stated times by any act of Congress, within the time prescribed by law or by regulations, shall be fined," and so forth, are you not?

A. It was the President's duty to report, not mine.

XQ. 1281. You are familiar with the fact that the President delegated or vested in the Alien Property Custodian certain duties under this Act, are you not?

A. Yes. If he would have wanted me to report, he would have notified me.

XQ. 1282. Including the seizure of property and the execution of the provisions of Section 12?

A. Yes. The report had to be made to him. If he wanted it, he could have gotten it in five minutes.

XQ. 1283. You have testified that you were familiar with the fact that the Federal Trade Commission issued from time to time and was issuing licenses to American manufacturers to manufacture, vend and use products and processes provided by patents and also trade-marks owned by alien enemies, is that true?

A. Yes.

XQ. 1284. You were aware that payments under such licenses were made to the Alien Property Custodian under the terms of said Act and in fact were collected by you as Alien Property Custodian during your term of office; were you not?

A. Yes, sir.

XQ. 1285. You were aware that the Alien Property Custodian had seized a number of contracts in favor of alien enemies made with American citizens by alien enemies providing for the payment of royalties or other compensation for the use of patents in the United States, owned by such alien enemies, were you not?

A. Yes.

XQ. 1286. You were aware that you as Alien Property Custodian were collecting compensations or royalties provided for by said contracts and payable thereunder from time to time during your term of office, were you not?

A. I was.

XQ. 1287. You were of course aware that under Section 10 of the Trading with the Enemy Act, the maximum royalty allowed to be charged under such license by the Federal Trade Commission was 5 per cent.?

A. I did not know that.

XQ. 1288. And further, that United States Courts were given jurisdiction within one year, upon suit of the owner of the patent, to fix a reasonable license fee and to confirm said license for the life of the patent where expenditures had been made in the development of the processes or in connection with the use thereof; you knew that?

A. Yes, sir.

XQ. 1289. You of course knew at the time of these various assignments that in the event no expenditures had been made under such licenses, and the same should be for any reason terminated at the end of the war, though granted for the life of the patent, and the same had been seized by the Alien Property Custodian, that the title to such patent with the right to use the same was vested in the Alien Property Custodian subject to such final disposition as Congress

might direct under the Trading with the Enemy Act; were you not?

A. I do not know. I would like to have you read that again.

XQ. 1290. I will read it over to you. You were of course aware that in the event no expenditures had been made under such licenses of the Federal Trade Commission and the same should be for any reason terminated at the end of the war, though granted for the life of the patent, and the patent had been seized by the Alien Property Custodian, that the title to such patent, with the right to use the same, was vested in the Alien Property Custodian subject to such final disposition as Congress might direct, under the Trading with the Enemy Act?

A. Yes, sir. I mean, provided it had not been sold by the Alien Property Custodian.

XQ. 1291. Yes. Did you not while Alien Property Custodian and as President of the Chemical Foundation, subsequent to the assignment of these patents to the Chemical Foundation, urge the licensees of the Federal Trade Commission to surrender their licenses and take out licenses under the Chemical Foundation?

A. Yes, sir.

XQ. 1292. Did you not have your patent counsel, Mr. Hoguet, appear before the Federal Trade Commission on behalf of the Chemical Foundation and urge that Commission to accept such surrender?

A. Yes, sir.

XQ. 1293. You were aware, were you not, that the Attorney General of the United States was by law the legal adviser of the Alien Property Custodian?

A. Yes, sir.

XQ. 1294. Did you ever obtain from the Attorney General of the United States an opinion as to the right of the Alien Property Custodian to sell property at private sale or as to the legality of the several sales

and assignments made by you to the Chemical Foundation?

A. No, sir.

XQ. 1295. Did you ever obtain from the Attorney General of the United States an opinion as to the right of the Alien Property Custodian to sell alien property seized by him at less than its fair value?

A. I don't think I did.

XQ. 1296. I just asked you if you obtained such an opinion?

A. I don't think so.

XQ. 1297. Did you not know that the trade-marks sought to be conveyed by you under the assignments in evidence in this case, with which you are familiar, were trade-marks upon products manufactured by German concerns in Germany?

A. I would have to examine to find out whether that was universally true. I would say it was generally true.

XQ. 1298. Did you not know that the business with which the said trade-marks were associated was in fact conducted in Germany and the products sold under such trade-marks were produced in Germany?

A. In general, I should say that was true.

XQ. 1299. Did you not know that you had not seized and could not seize or convey a business with which said trade-marks were associated or the plants in which the products under said trade-marks were in fact manufactured, since they were outside the territorial limits of the United States?

A. That is a big legal question on which there are two sides. You mean that the trade-mark won't go with anything except a going business?

XQ. 1300. Yes. I believe you testified Tuesday that you did not make any inquiry as to the amount of accrued license fees or the monthly or annual income

under licenses issued by the Federal Trade Commission?

A. I did not.

XQ. 1301. And the same applies to income on contracts held by the Alien Property Custodian?

A. Yes.

XQ. 1302. Did you make any inquiry as to the reasonableness of the Federal Trade Commission license fees provided in the various licenses issued by that Commission?

A. No.

XQ. 1303. I again read from page 360 of your evidence on H. R. 2706, already referred to, in which you replied to a question by Mr. Green, as follows:

> "Why, Mr. Green, it was by virtue of our connection with the Alien Property Custodian's office that we saw it as our public duty not to let this thing revert to where it was, and everything we have done since has been because of what all of us saw was threatening America and because we saw the situation which had been hanging over America before the war, and it was in our endeavor to use that information for the benefit of the American people that we assumed the burden of carrying on this fight."

I think you said that was your tesitmony?

A. It was.

XQ. 1304. Now, Mr. Garvan, do you mean to tell me that your purpose in making the assignment of April 10, 1919, and the assignments thereafter made by you were with a view of promoting and developing American industry by making these patents available to American industry on the best terms possible?

A. That was only a means to the end, to our aim.

XQ. 1305. That was a means to an end?

A. To our aim.

XQ. 1306. What was your real aim?

A. Our real aim was to make this country safe

to win this war. Without the building up of this industry, the war was lost and is lost today. And furthermore, to lay a foundation for the future development of American medicine. And only upon the basis of a developed organic chemical industry can either of those two things be accomplished and if it is not accomplished, the Germans have still won the war. France finds it out today. England has found it out and America found it out.

XQ. 1307. I don't mind about America, but as to England and France, you were not undertaking to develop their industry, too, were you?

A. No, they are taking care of themselves.

XQ. 1308. I thought so.

A. They are doing the same thing over there.

MR. ANDERSON: That I move to strike out. He cannot know what they are doing in England and France.

THE COURT: Motion granted.

XQ. 1309. Were you on April 10, 1919, and on the dates of your subsequent conveyances to the Chemical Foundation familiar with the provisions of Section 3, sub-section B, of the charter of the Chemical Foundation, which is as follows:

> "In furtherance of the above objects and purposes the Corporation may grant non-exclusive licenses only, to make, use, and sell the inventions covered by any patents owned or controlled by it to the United States of America, upon such terms as the Board of Directors may determine, and also upon reasonable and equal terms and without advantage, as between licensees, to the following: (1) Natural persons, citizens of the United States; (2) Copartnerships, all the members of which are citizens of the United States; and (3) Corporations organized under the laws of the United States or of any state, territory, or dependency of the United States, of which not less than three-fourths of the capital stock and the beneficial in-

terest therein is owned by stockholders who are citizens of the United States and who were not, prior to the 'end of the war,' as used in the 'Trading with the Enemy Act,' enemies or allies of enemies, as defined by said Act, and the amendments thereto.

"The Board of Directors may refuse to issue any license or may revoke any license granted by the Corporation and may prescribe the terms and conditions of said licenses."

A. Yes, sir.

XQ. 1310. You were familiar with that?

A. Certainly.

XQ. 1311. And you were familiar with all the other provisions of the charter, I assume?

A. I think so.

XQ. 1312. I will read to you your evidence before the Committee on Ways and Means referred to here as the Hearing on H. R. 2706, page 245, in which the following takes place:

"Mr. Green. I asked the gentleman what he meant by efficiency in this connection. Instead of answering that directly he was drifting off into some other matter.

"Mr. Garvan. I was illustrating. There is no efficiency in a Government-owned patent which is open to everyone, because no one will spend the money to develop an invention under such circumstances and fit up plants for the purpose of manufacture when a neighbor can put up another plant next door to him the next day. If these patents had been thrown open to the public we would have been in the same position and had no protection against a German project——

"Mr. Green (Interposing). Let me show you how utterly irrelevant that is. You are proposing by this Chemical Foundation to permit non-exclusive licenses to be issued. That is, one man can put up a factory, and another man can get a license and may put up another factory, and by that same

argument the Chemical Foundation would not know what the situation was.

"Mr. Garvan. To the capacity of the industry, you will find in the charter."

Mr. Garvan, as you are familiar with the charter, can you point out any provision in it that limits your duty to license to the capacity of the industry?

A. No, not in that language?

XQ. 1313. Not in that language?

A. It does in spirit and does in intent and purpose.

XQ. 1314. And you have so acted under it?

A. No one but a German has ever complained of that proposition.

XQ. 1315. You have so acted under it, have you?

A. Absolutely.

XQ. 1316. Who determines the capacity of the industry?

A. We have never had to determine the capacity of the industry, because we have not reached it yet.

XQ. 1317. You say you acted under it in that spirit. I will ask you again to answer my question. Assuming you had to exercise that judgment, who determined the capacity of the industry, in your understanding?

A. I will explain it to you. We called together all the stockholders of the industry and asked them what should be our general rule on that and it was decided some two or three years ago that no license would ever be refused.

XQ. 1318. Is there a matter of any record on that?

A. Yes, sir. That is a matter of record in one of the first meetings, on the minutes of the Foundation, of the Advisory Committee. You will find it there.

XQ. 1319. Now, suppose an application came up——

A. (Interposing) So that this idea of limiting —at first, for instance, we were afraid—the thing that made us use that word was the salvarsan patent, because Dr. Stieglitz and others thought that the Department of Drugs could not take care of more manufacturers of salvarsan than they were taking care of then; that they could not provide the funds to examine and so forth.

XQ. 1320. Now, I will ask you this——

A. There was that reservation that was necessary to keep for special circumstances because of our ignorance of what the development of the industry would demand.

XQ. 1321. I see. I will ask you again the question which I asked you before. When you came to the question of the capacity of the industry, who would determine it in your understanding?

A. I don't know, because we never got there.

XQ. 1322. You stated in Congress you had a limitation to the capacity of the industry?

A. That was in our minds at that time.

XQ. 1323. You understood that was within the meaning of your charter?

A. That was in our minds at that time.

XQ. 1324. At page 294 of the same testimony before the Committee on Ways and Means you stated in answer to a question by Mr. Crisp:

> "MR. CRISP: If these patents were sold to any individual they would have a monopoly.
>
> "MR. GARVAN: Absolutely, so far as the patents go."

A. What page is that?

XQ. 1324. (Continued) Page 294.

> "MR. COPLEY: Can not those trustees equally as well create a monopoly by licensing?
>
> "MR. GARVAN: Our charter provides that we

must give a license to every American who applies for the charter, up to the capacity of the industry. All the stock, of course, is held by the manufacturers themselves and the consumers. Now, if the trustees attempted to do anything to depart from the terms of their trust, the Courts would step in right away on behalf of the stockholders to prevent it."

Is that your testimony?

A. Yes, sir.

XQ. 1325. Have you not refused licenses in several instances?

A. No, sir.

XQ. 1326. Did you not testify here on Tuesday they had refused licenses in two instances?

A. I testified to one instance alone; one where we deferred a license.

XQ. 1327. Who determined the question as to the refusal of that license?

A. As to the refusal of the license—which one?

XQ. 1328. That one that you did refuse?

A. I think it was the Board of Directors.

XQ. 1329. The Board of Directors determined that?

A. I am not sure what formality—whether there was ever a necessity of formally refusing it.

XQ. 1330. You said you had never given an exclusive license?

A. No, sir.

XQ. 1331. Did you not give an exclusive agency to the Pacific Flush Tank Company?

A. That is not an exclusive license. That is an agency to go out and solicit business for us. A license in every city of the country, there is nothing exclusive about that.

XQ. 1332. And they have the exclusive right to license have they not?

A. No, you will find it provided that they had to come back and get the licenses issued by us; but they have a right to go out and drum up business for us.

XQ. 1333. Then it is an exclusive agency, whatever it is?

A. Yes, it is an exclusive agency to go out and push that one patent, to get as many licensees as possible.

XQ. 1334. At page 359 of your testimony before the House Committee on Ways and Means, you were testifying as to the licenses and you make this statement in reply to a question of Mr. Green:

> "That charter in reference to license was approved—drawn, practically drawn, but approved —by every dye manufacturer in the country. Now, if they thought that their ability to get license was to be limited, they never made a suggestion of it. They had their lawyers, Mr. Kalish—they had at least 15 or 20 of their lawyers who went over the charter and the license provision was drawn in accordance with their wishes. The Dye Institute, which is an open institution now, composed of every dye manufacturer in the country who cares to join, and with an open invitation to every manufacturer who manufactures a pound of dye in the country to join, the license is as the industry requested it, and that language is their language, so that they are not alarmed by it."

Is that your testimony?

A. Yes, sir.

XQ. 1335. In your testimony before the Committee on Finance of the United States Senate, on H. R. 8078, at page 550, you testified as follows; question by Mr. Demming:

> "Mr. Demming: With regard to the Chemical Foundation and the patents which the Chemical Foundation owns, isn't it the privilege of the Chemical Foundation to decline or to allow the

privilege to ayone whom they may select to make products under any patent?

"MR. GARVAN: No; I do not believe it would be considered by any court. We would have to show some reason for doing it, for not issuing it to some American. We never shut out anybody or refuse a license. A German can not come over here and take out a license from the Chemical Foundation. Those patents are for the purpose of educating American chemists, and the Germans cannot send their chemists over here and evade our plan or rules, but any American who wants to develop the industry in America can take out any license he wants.

"MR. DEMMING: Then it is the policy of the Chemical Foundation to apply the same principles for the stocks of the Chemical Foundation for the privilege of the right to manufacture under any patent which they hold if they will grant him a license.

"MR. GARVAN: That is our policy.

"MR. DEMMING: No matter who he is?

"MR. GARVAN. 'No matter who he is' is pretty broad.

"MR. DEMMING: Then you do retain the privilege or the right to exercise a choice?

"MR. GARVAN: Suppose a man wanted a thing for the purpose of blackmail, or for a wrongful purpose, or for the purpose of forcing fake stock upon the people and to advertise he had valuable patents?

"MR. DEMMING: You are judges of that.

"MR. GARVAN: First, under the constitution, the stockholders themselves who own the business and the trade, make their recommendations to us, and we follow their recommendations.

"SENATOR CURTIS: In short, it is the purpose to grant the request of any reliable applicant?

"MR. GARVAN: Certainly. First, the application goes—for instance, for dye patents, to the dye trade for recommendation as to the man. For instance, as to the Badische patents, dye patents,

we have already granted five or six licenses; and anyone can come in and get a license who will help on with this general cause."

Is that your testimony?

A. Yes, sir. Does it appear who Mr. Demming was?

XQ. 1336. He was a member of Congress, I think.

A. No, no, no; he was an employee of Mr. Metz.

XQ. 1337. Very good. I have no objection to that appearing on the record. But you did so testify, did you not?

A. Yes, sir.

XQ. 1338. You spoke there of referring it to the stockholders. Do you refer in that connection to the Advisory Committee?

A. That is what I referred to. We referred that general question to them and they passed on it and said it was better to have a regulation leaving no restrictions on granting a license.

XQ. 1339. There is included in this record, as Exhibit F with the Bill of Complaint, and as being introduced in evidence as an exhibit, a paper entitled "Constitution and By-laws, Chemical Foundation, Advisory Committee." Is that the committee to which you refer?

A. Yes, sir.

XQ. 1340. Is that the constitution which you referred to in your evidence, where you said, "under our constitution"?

A. I suppose so; I do not know exactly.

XQ. 1341. You have no other constitution have you?

A. No, no.

XQ. 1342. This Advisory Committee consists, as appears from the constitution, of the President and the Vice President of the Chemical Foundation, a rep-

resentative of the American Dyes Institute and a representative of the Manufacturing Chemists' Association of the United States, to be respectively chosen by each association, the chairman of the Section Committee, and not to exceed five committeemen at large, to be chosen by the Chemical Foundation. Is that the organization of it now?

A. Yes, sir.

XQ. 1343. Can you tell me who that Advisory Committee is today, and who they represent?

A. Well, I can get it for you.

XQ. 1344. I would like very much to know the names of the members of the Advisory Committee and what institutions they represent.

A. I can name some of them for you.

XQ. 1345. Name what you can of them. Will you put in an answer to this question giving a complete list of the Advisory Committee, showing the organizations which they represent, commercial organizations?

A. Yes, sir.

MR. KRESEL: That appears from the minutes of that committee, which are in, Colonel. But we will give it just the same.

MR. ANDERSON: It does appear from the minutes.

MR. KRESEL: Yes, the minutes are in. You put all of them in.

MR. ANDERSON: I will get the witness to identify some of these gentlemen who appear to have attended these meetings.

MR. KRESEL: What date is this?

MR. ANDERSON: The meeting of October 18th, 1922.

XQ. 1346. At that meeting there were present Francis P. Garvan, Mr. James T. Pardee, of Section 1. What section was that?

A. I do not know which section he came under. He is of the Dow Chemical Company, but they have several different lines. They are heavy chemical people, dye people and drug people. I do not know which section he was in.

XQ. 1347. Dr. W. J. Schieffelin?

A. That is the Schieffelin Drug Company.

XQ. 1348. That is drugs?

A. Yes.

XQ. 1349. Mr. George P. Adamson?

A. I do not remember which company he is in.

XQ. 1350. That is Section 3. Mr. E. A. Colby, Section 5. Do you know him?

A. No. I mean I cannot identify his company.

XQ. 1351. Mr. Henry Howard?

A. Mr. Howard is Secretary of the Manufacturing Chemists' Association. He was with the Merrimac Chemical Company at that time, now with the Grasselli.

XQ. 1352. At the meeting on October 26, 1921, there were present Mr. Henry Wigglesworth—whom did he represent?

A. General Chemical Company, heavy chemicals.

XQ. 1353. Who was Mr. S. S. Norton?

A. Of the Permutit Company, a resuscitation company, which has that machine for resuscitating people overcome.

XQ. 1354. At the meeting of April 20th, 1921, I find present Mr. Pardee, Mr. Schieffelin, Mr. Wigglesworth, Mr. Norton and Mr. Howard, whom you have identified, and Mr. J. Merritt Matthews, representing the American Dyes Institute. Was that Dr. Matthews?

A. Yes, that is Dr. Matthews. He is the editor of a color journal, a dye journal.

XQ. 1355. I find at another meeting on November 18, 1920, the additional name of Dr. W. T. Cashman.

He represented the Grasselli Chemical Company, did he not?

A. The Grasselli Chemical Company.

MR. KRESEL: Colonel, do you still want us to furnish a list to date? We will do it, if you say so.

MR. ANDERSON: You might give me the list, and if it adds any names I will put it in; if it does not, I will not.

MR. KRESEL: All right.

MR. ANDERSON: Because the committee as provided by the constitution is much larger than that and I want to see if it was ever filled.

XQ. 1356. I note in the provisions of the charter which I read you a while since there is contained the statement that the board of directors may fix the terms of all licenses and may cancel licenses. Have you ever cancelled any licenses?

A. Not except on request, I do not think.

XQ. 1357. Are you sure about that?

A. Before swearing positively I would like to make an examination. I have no recollection of a license that we have cancelled except at the peoples' request. But I would like to see Mr. Buffum there, who might tell me. Mr. Buffum informs me we have not.

XQ. 1358. All of your licenses issued by you to domestic manufacturers or dealers contain a provision to the effect that the licensee is not permitted to import under that license, do they not?

A. I think so.

XQ. 1359. You think so?

A. I think so.

XQ. 1360. Of course, the license form is in evidence. I will show it to you if you wish.

A. That is so, to my recollection.

XQ. 1361. Your license fee on all importations I think you said was 10 per cent?

A. Yes, sir.

XQ. 1362. I mean a royalty.

A. A royalty. We have no license fee.

XQ. 1363. Your royalty on all importations is 10 per cent.?

A. Yes, sir.

XQ. 1364. But you do have a license fee for issuing the license of $100?

A. Not on importations. On domestic manufacture.

XQ. 1365. Is not that 10 per cent. based upon the American price, which includes 60 per cent. import duty now imposed on dyestuffs?

A. Yes, sir.

XQ. 1366. It is?

A. Yes, sir.

XQ. 1367. Then the 10 per cent. which you levy is on the gross American selling price?

A. Yes, sir.

XQ. 1368. Do you know of any provision in your charter limiting the power of the Board of Directors to prescribe such import license royalty as they may see fit?

A. No, sir.

XQ. 1369. Mr. Garvan, much has been said here about the so-called Haber nitrogen patents. At the time that these patents were transferred by you to the Chemical Foundation did you know the production of synthetic ammonia in Germany under those patents? I mean the amount of production of synthetic ammonia per annum.

A. No. I knew it was large during the war.

XQ. 1370. Did you know the amount of synthetic ammonia consumed in the United States at that time?

I am not speaking of the present, but did you know it at that time?

A. I knew at that time, in the spring of 1919, that there was an enormous surplus here.

XQ. 1371. No, I asked you if you knew the annual consumption of synthetic ammonia here.

A. No, I beg your pardon, I did not. I probably did at that time, but I do not know now.

XQ. 1372. And you cannot now recall whether you knew at that time?

A. I cannot definitely recall.

XQ. 1373. You made no investigation of the subject yourself?

A. Oh, it was discussed all the time.

XQ. 1374. But I mean you made no personal investigation of the subject of synthetic ammonia in the United States, did you?

A. I do not know what you mean by an investigation. All of our war literature was full of it and all of our departments were full of it, and we knew it was why Germany had been allowed to keep on with the war and all that.

XQ. 1375. I ask you if you had made any personal investigation. We need not go into that.

A. Oh, I could not. I am not a chemist.

XQ. 1376. Your counsel showed the other day from a card of the Federal Trade Commission that that card showed no income under the license issued under the Haber patent to the Semet-Solvay Company, that I recall.

A. No, it showed some income there.

XQ. 1377. No, I am speaking now of the Federal Trade Commission license.

A. Oh, no.

XQ. 1378. The Chemical Foundation did in fact license the use of the Haber patents after it took them over, did it not?

A. Yes, sir.

XQ. 1379. To the General Chemical or to the Atmospheric Nitrogen Company?

A. Semet-Solvay. I think that that read to the Semet-Solvay.

XQ. 1380. The Semet-Solvay?

A. Yes.

XQ. 1381. The General Chemical and the Semet-Solvay are now constituents of the Allied Chemical, anyway.

A. I think the license read to the Semet-Solvay. But it is in evidence, that license. I won't be certain.

XQ. 1382. Do you or do you not know that the business of producing synthetic ammonia at Syracuse, which has been referred to here, is carried on in the name of the Atmospheric Nitrogen Company—or is it?

A. I would not be able to swear to that here. I know it is a subsidiary or part of the Allied Chemical Company.

XQ. 1383. Mr. Garvan, could you produce a copy of that particular license?

A. Certainly. I think it is in evidence.

XQ. 1384. I do not think any of the licenses have gone in, just the forms; but I would like to see that particular license.

A. We have it here.

MR. KRESEL: We will show it to you.

XQ. 1385. How many licenses have you issued to persons or corporations not stockholders of the Chemical Foundation, do you know?

A. I think it is about half and half.

MR. KRESEL: What do you mean by that? That does not mean anything.

THE WITNESS: Out of the four hundred odd I think half of them are to non-stockholders.

XQ. 1386. Any of the statements you put in show the licenses issued to stockholders?

A. We have it here.

XQ. 1387. We can check that then, from the record, can we not?

A. We had it here the other day. We can get it over night.

XQ. 1388. If it appears from the record already put in where we can get it I do not want to bother you and have to put it in again.

A. It is either in or can be checked.

MR. ANDERSON: If we can figure it out from the record I will not have the witness put it in again.

MR. KRESEL: Here is the license that you asked for, Colonel. (Handing counsel.)

THE WITNESS: That includes more than the Badische. There are more than those relating to the Badische patents; all we had was put into that.

XQ. 1389. At page 296 of your evidence before the Ways and Means Committee already referred to, you were asked by Mr. Longworth:

> "That is what I wanted to get at now. Of the 4500 patents at least the ones that are of real value here, practically, relate to the vat dyes?
>
> "Mr. Garvan. The vat dyes.
>
> "Mr. Longworth. And which are not made in this country?
>
> "Mr. Garvan. Not made in this country.
>
> "Mr. Longworth. And are of great value to the American manufacturers?
>
> "Mr. Garvan. Tremendous; that is the first aim.
>
> "Mr. Longworth. Almost a necessity for certain kinds of cloth, are they not?
>
> "Mr. Garvan. They certainly are."

That is your testimony, is it not?

A. Yes, sir.

XQ. 1390. You said yes?

A. Yes, sir.

XQ. 1391. Mr. Garvan, are not the indanthrene dyes among the most valuable?

A. Yes, sir.

XQ. 1392. Of the present patented dyes. Is it not true that all of the licenses issued by you for indanthrene dyes are held by the Newport Chemical Company and the duPont Chemical Company, or both?

A. No, sir. I do not think so. I think other companies hold them.

XQ. 1393. Are you sure about that?

A. I can verify it.

XQ. 1394. The record that you put in the other day, that large exhibit, from my study of it shows they were the holders of the patents on indanthrene dyes.

MR. KRESEL: Holders of the patents?

MR. ANDERSON: I mean of the licenses.

A. I think there are other licensees on specific dyes. You see, the National has the Federal Trade Commission license on those dyes. They have never surrendered those.

XQ. 1395. Who is that?

A. The National Aniline.

XQ. 1396. They had the Federal Trade Commission license?

A. Yes.

XQ. 1397. But the only licenses you have issued so far as your statement shows are to the Newport Chemical Company and the duPont Chemical Company on indanthrene dyes?

A. I think there are other licenses there.

XQ. 1398. You would be guided by your statement, would you not? Whatever that statement shows you would say was right?

A. Yes. I will look it up.

XQ. 1399. You put in that statement, and that

statement is correct, is it not—that large statement showing the patents and the revenues?

A. Oh, yes. But sometimes you cannot tell by the name of a dye whether it is an indanthrene or not. I would have to look that over. Those two companies have made the most progress in making vat dyes, I want to be frank about that. They are the two that are farthest ahead in that matter.

XQ. 1400. Do you know anything about the selling price of indanthrene dyes and colors in 1914 and the present selling price?

A. No, the Tariff Commission could tell you that; I could not.

XQ. 1401. You cannot testify as to that at all?

A. Oh, I could look it up and get it from the royalty paid to us on the selling price, and then I can get it from—I can get it for you if you want it.

XQ. 1402. I would like it very much if either you or some other witness, one of your accountants or witnesses as your counsel may find most convenient—it matters not which to me—would give me from your records, if it can be done, the selling price on these indanthrene colors in 1914 and at the present time.

A. We have not the records of 1914.

MR. KRESEL: Colonel, if you will be good enough to give us a list of just what colors you are interested in, we will try to get you the information.

THE WITNESS: That would come from the Tariff Commission.

MR. KRESEL: We will get it in some way.

MR. ANDERSON: Here is a statement which I have had made up showing the patent number, the color covered by it, and the sales for the fiscal year, the selling price for 1914, the present selling price, and the present manufacturers, domestic manufacturers, and the date of the expiration of the patent. If you will check that and find out

whether it is right, I will put that information in as evidence, so as to save us both trouble.

MR. KRESEL: We will do that. Colonel, as long as you are resting now from a question, I want to hand you a list of the licensees of the Chemical Foundation who are stockholders and a list of the licensees who are not stockholders (handing counsel).

THE COURT: Do you want those marked?

MR. ANDERSON: All right, sir, but I want a chance to study that list and I cannot stop now.

XQ. 1403. You have only one license outstanding under the Haber process patents?

A. Prior to January 1st, 1923.

XQ. 1404. Mr. Garvan, you have put in evidence here a paper which purports to be a release to the United States of all claims for infringement on all enemy-owned patents seized by the Alien Property Custodian, which you said you delivered to Mr. A. Mitchell Palmer as Attorney General. Can you hand me that paper? You recall that release, do you not? There is no use waiting for it. There was no consideration named in that instrument at all for the release, was there?

A. Do you want me to weaken the Government's title to that release?

XQ. 1405. No, I am not doing that.

A. I would rather not testify against the Government on that.

XQ. 1406. Mr. Garvan, I am not asking you to testify against the Government.

MR. KRESEL: The instrument speaks for itself to begin with.

A. The instrument speaks for itself.

XQ. 1407. All right. Did you, then, investigate to ascertain how many patents had been infringed by the United States during the war?

A. I listened to the Army and Navy on the subject.

XQ. 1408. Did they tell you how many?

A. They told me it would amount to probably hundreds of millions of dollars, if they had to pay it.

XQ. 1409. Do you know whether or not the Peace Treaty provided protection to the United States in that regard?

A. That was later. That had not been drawn at that time.

XQ. 1410. It had not been drawn at that time?

A. No.

XQ. 1411. May I ask what was your idea of your authority to execute a release to the United States of all claims for infringements of patents; where did that authority come from? I just want your idea, the idea on which you acted?

A. Why, I don't like to testify to what I have done, which may be used against the Government in hundreds of millions of dollars of suits. I don't think I ought to be called upon to do it. I have not the paper before me. I would want to study up that transaction before I testified.

THE COURT: The Government of the United States is now asking for that information, so I will have to ask you to answer, Mr. Garvan.

THE WITNESS: Then repeat the question.

XQ. 1412. I ask what was your idea of your authority to execute such a release?

A. I cannot remember at this time.

XQ. 1413. You also put in evidence here a license and release purporting to cover approximately 5700 patents and other rights, which you executed and delivered to the United States in consideration of $100,000. I think you delivered it to the Navy Department?

A. Yes, sir.

XQ. 1414. Did you make any investigation of the subject before you executed that instrument?

A. I had numerous conferences with the Army and the Navy.

XQ. 1415. And your answer as to authority in that instance is the same as to the preceding question, is it?

A. No, I do not think so. I considered that the consideration there was the fair value under the circumstances.

XQ. 1416. That release took the place of the former one, did it not?

A. No, no, no, you have got that wrong, Colonel. The 5700 were on gun carriages and ammunition and surgical instruments and everything. The release was on what we were selling to the Chemical Foundation; it was on the chemical patents.

XQ. 1417. The chemical patents alone?

A. The 5700 were on the actual implements used in waging war.

XQ. 1418. Mr. Garvan, as to the license you have put in here, executed by the Chemical Foundation to the Navy Department——

A. You mean the big license, what we call the big license?

XQ. 1419. Yes. Do you not know that the negotiations in that regard began as early as January, 1920?

A. I would not be at all surprised.

XQ. 1420. While I am waiting for the correspondence, I call your attention to your evidence on Tuesday to the effect that you seized the gyroscope patents at the suggestion of Commander Norton. Do you not know that months after these patents had been seized by you the Secretary of the Navy asked you to advise him how he could get an assignment of these patents to the Navy Department?

A. No, I don't know that.

XQ. 1421. Or four of them at least?

A. No, I don't know that.

MR. ANDERSON: In order to complete the record on this subject for whatever value it may have, I would like to ask leave to introduce additional correspondence in addition to what counsel introduced on Tuesday. Have you any objection to its going in at this point?

MR. KRESEL: No; as to the order of the matter I do not object at all. I would just like to see what it is you are offering.

MR. ANDERSON: Here it is (handing papers). While you are looking it over I will go ahead with other questions, and when you finish looking it over, I will offer it.

XQ. 1422. Mr. Garvan, a gyroscope is an instrument used in the navigation of ships, is it not?

A. Yes, sir.

XQ. 1423. Can you state what relation such an instrument has to the objects and purposes of the Chemical Foundation as expressed and defined in its charter?

A. Only to help the Government.

XQ. 1424. To help the Government?

A. Yes.

XQ. 1425. Is there any such provision in the charter?

A. No. That is its purpose. The Navy asked us to take them over for their purposes, and we took them over—paid our money.

XQ. 1426. Then you cannot state that they have any relation to the objects and purposes of the Chemical Foundation as expressed in the charter?

A. I cannot tell you. I cannot tell a gyroscope from the back of a house. They told us it was necessary for the navigation of our Navy and our ships; that it was some balancing apparatus which—I don't know—helped their compasses, or something.

XQ. 1427. You do not really know anything about it.

A. (To XQ. 1426 continued.) ——that they were owned by the Germans, and they wanted to be saved from the Germans having control of our ships.

Mr. Anderson: I offer in evidence a letter to the Chief of the Bureau of Ordnance of the Navy, signed by P. A. Blair, dated January 23, 1920, subject: "Alien Enemy Patents."

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 614." (*See Exhibits, Vol. III, page 1483.*)

Mr. Anderson: I offer in evidence copy of a letter dated February 11, 1920, addressed to Alien Property Custodian, signed by Josephus Daniels.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibt No. 615." (*See Exhibits, Vol. III, page 1487.*)

Mr. Anderson: I offer in evidence letter dated July 28, 1920, by Charles B. McVay, Jr., Rear Admiral of the United States Navy, addressed to Alien Property Custodian, subject : "Ownership of Patents."

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 616." (*See Exhibits, Vol. III, page 1490.*)

Mr. Anderson: I offer in evidence a memorandum of the Chief of the Bureau of Ordnance, dated July 18, 1920, signed G. B. Wright, subject "Patents held by Alien Property Custodian, acquisition thereof."

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 617." (*See Exhibits, Vol. III, page 1491.*)

Mr. Anderson: I offer in evidence copy of letter dated January 14, 1921, addressed to the

Navy Department, attention of Commander A. L. Norton, signed J. R. Zimmerman, Division of Records of the Alien Property Custodian.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 618." (*See Exhibits, Vol. III, page 1492.*)

MR. ANDERSON: I offer in evidence letter dated January 17, 1921, addressed to Commander A. L. Norton, General Inspector of Ordnance, signed Chemical Foundation, by Lloyd VanDoren.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 619." (*See Exhibits, Vol. III, page 1493.*)

MR. ANDERSON: I offer in evidence memorandum dated January 19, 1921, "To: All Desks," signed "Charles B. McVay, Jr.," Chief of Bureau, subject, Purchase of license under patents from the Alien Property Custodian.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 620." (*See Exhibits, Vol. III, page 1494.*)

MR. ANDERSON: I offer in evidence copy of a letter dated January 19, 1921, signed Charles B. McVay, Jr., Rear Admiral of United States Navy, to the Chemical Foundation, Inc., attention of Mr. VanDoren.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 621." (*See Exhibits, Vol. III, page 1495.*)

MR. ANDERSON: I offer in evidence copy of a letter dated January 20, 1921, to Rear Admiral Charles B. McVay, Jr., signed by Chemical Foundation, Inc., by Lloyd VanDoren.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 622." (*See Exhibits, Vol. III, page 1496.*)

MR. ANDERSON: I offer in evidence memorandum dated 17th of February, 1921, to Bureau of Medicine and Surgery, signed Charles B. McVay, Jr., Chief of Bureau.

Received in evidence and marked "Plaintiff's Exhibit No. 623." (*See Exhibits, Vol. III, page 1496.*)

MR. ANDERSON: With the first endorsement, dated February 25, 1921.

Received in evidence and marked "Plaintiff's Exhibit No. 623-A." (*See Exhibits, Vol. III, page 1498.*)

MR. ANDERSON: And second endorsement dated March 9, 1921.

Received in evidence and marked "Plaintiff's Exhibit No. 623-B." (*See Exhibits, Vol. III, page 1499.*)

MR. ANDERSON: And the third endorsement dated March 11, 1921.

Received in evidence and marked "Plaintiff's Exhibit No. 623-C." (*See Exhibits, Vol. III, page 1500.*)

THE COURT: Admitted.

MR. ANDERSON: I offer in evidence letter dated March 28, 1921, from the Chemical Foundation by Lloyd Van Doren addressed to Mr. Charles B. McVay, Jr., Rear Admiral, United States Navy, as Plaintiff's Exhibit 624.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibt No. 624." (*See Exhibits, Vol. III, page 1501.*)

MR. ANDERSON: I offer in evidence letter dated July 19, 1921, from the Chemical Foundation, Inc., by Lloyd Van Doren, to Commander A. L. Norton, as Plaintiff's Exhibit 625.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 625." (*See Exhibits, Vol. 111, page 1502.*)

MR. ANDERSON: I offer in evidence letter dated December 15, 1921, to the Chief, Bureau of Ordnance, signed "Palmer, Davis & Scott," as Plaintiff's Exhibit No. 626.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 626." (*See Exhibits, Vol. 111, page 1504.*)

XQ. 1428. The firm of Palmer, Davis & Scott was the law firm of A. Mitchell Palmer, was it not?

A. Yes, sir.

MR. ANDERSON: I offer in evidence a letter signed by Charles B. McVay and A. L. Norton to Palmer, Davis & Scott, dated January 19, 1922, subject: Acceptance by Department of License from the Chemical Foundation, Inc., covering letters patent owned by it.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 627." (*See Exhibits, Vol. III, page 1505.*)

MR. ANDERSON: I offer in evidence letter dated January 21, 1922, addressed to Honorable Charles B. McVay, Rear Admiral, U. S. Navy, signed "Palmer, Davis & Scott," as Plaintiff's Exhibit 628.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 628." (*See Exhibits, Vol. III, page 1506.*)

MR. ANDERSON: I offer in evidence letter dated June 3, 1922, to Rear Admiral Charles B. McVay, Jr., signed "Palmer, Davis & Scott," as Plaintiff's Exhibit No. 629.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 629." (*See Exhibits, Vol. III, page 1506.*)

XQ. 1429. Mr. Garvan, I now read to you from your evidence before the Ways and Means Committee on H. R. 2706, page 342, as follows:

> By Mr. Kitchin: "Mr. Garvan, I ask you this, owing to the insinuations of the questions heretofore asked you. Why was it that men interested in this chemical foundation desired your connection with it as President and Director, and why was it that you were induced to accept it?
>
> "Mr. Garvan. Because for the last eighteen months, or ever since the war began, I have been engaged in uncovering these German corporations which were camouflaged under alleged American ownership, and this forced me to spend my entire time on the study of German business forces in this country.
>
> "Mr. Kitchin. You are in a position to know more about it than anybody else?
>
> "Mr. Garvan. I know all about it. I have had all the Albert stuff, and all that other thing has been passing through my hands, and they felt that it would be essential that I was there, so that if anything was attempted to be put over on the American industry I would be able to have the knowledge at my hand of their past so as to connect it with their present or future activities. It was only to allow the American industry to utilize the information which the war had collected in my hands."

Is that your testimony?

A. Yes, sir.

XQ. 1430. Mr. Garvan, your counsel put in evidence a few days ago, in the cross-examination of Mr. Metz, an original letter of Dr. Albert?

A. No, an original letter of Mr. Metz.

XQ. 1431. That Mr. Metz addressed to Dr. Albert. Where did you get that letter?

A. I don't know. I assume that I had it in New

York at the time that we were trying the Metz case. I suppose that is where it came from.

XQ. 1432. Have you any other of the Albert correspondence at this time?

A. I don't know.

XQ. 1433. If so, I would like to ask you to produce it.

A. If I have anything. I will look through anything that I have. I have nothing of any originals.

XQ. 1434. Have you copies of the Albert correspondence in your possession?

A. Oh, I have got a good many copies.

MR. KRESEL: You mean all correspondence signed by Mr. Albert?

XQ. 1435. As a matter of fact, the Albert papers were seized in New York, were they not?

A. No, not altogether. I never seized the Albert papers.

XQ. 1436. You did not?

A. No, no.

XQ. 1437. How did they come into your possession?

A. Why, they came into my possession through the Secret Service. People brought me copies of it. Most of it was published in the *New York World*. They seized part of the papers off Dr. Albert.

XQ. 1438. I mean, how did the originals come into your possession, the originals you produced the other day?

A. I could not tell you whether the Secret Service gave me that or whether it was gotten—no, it would not be Metz's files—or whether it was produced at the time of the trial and was a useless paper apparently that was not used at that time. I could not tell you.

MR. KRESEL: Colonel, I am sorry, but I do not remember what letter you are referring to.

THE WITNESS: Enclosing the newspaper clipping.

MR. KRESEL: Oh, I see. I remember it now. I had forgotten it.

XQ. 1439. How did you get hold of the papers of Dr. Schweitzer introduced in evidence?

A. Those papers of Dr. Schweitzer I took from his house after he was dead.

XQ. 1440. What was your position at that time?

A. Head of the Bureau of Investigation, New York.

XQ. 1441. Dr. Schweitzer was an American citizen, was he not?

A. On the surface.

XQ. 1442. Well, he was an American citizen?

A. He would not have been if he had been alive. We found his directions from the German Government to become an American citizen, to camouflage his action.

XQ. 1443. I did not ask you what you found. I asked you whether he was an American citizen or not?

A. Yes. Are you complaining of my taking Dr. Schweitzer's papers?

XQ. 1444. No, I only want to know the facts.

A. (No answer.)

XQ. 1445. There was used in the evidence here either an original or copy—I did not see it—of the testimony of Mr. Metz on a hearing before one of the officers of the Alien Property Custodian?

A. Oh, that is a copy.

XQ. 1446. Have you that?

A. That is one of five or six copies that have been around everywhere.

MR. KRESEL: I have it right here. There it is (handing papers to Mr. Anderson).

XQ. 1447. Your counsel has handed me a paper entitled "Office of the Alien Property Custodian, 110 West 42nd Street, New York City, in the matter of the General Drug Company, before Joseph H. Choate,

Esq., Examiner, September 23, 1918." Do you know where that document came from?

A. I don't.

XQ. 1448. You don't?

A. It might have come from me. It might have come from Choate. It might have come from Kresel. I don't know where it came from. We made lots of copies.

XQ. 1449. Another document with the same title headed "Statement of Herman A. Metz." Do you know where that came from?

A. No.

XQ. 1450. Another document with the same title headed "Deposition of Herman A. Metz," dated September 26, 1918. Do you know where that came from?

A. No.

MR. KRESEL: Will you have those either put in evidence or marked for identification, Colonel?

MR. ANDERSON: Yes, they can be marked for identification. I do not want them in evidence. You read from them.

MR. KRESEL: They are not signed documents. You will admit that. They are not originals.

THE COURT: What is the pleasure of counsel with respect to that? Do they want it in evidence?

MR. ANDERSON: I am through with them. They may be put in or not, as far as counsel may desire. I only wanted to know what the fact was.

THE COURT: The Clerk will then return them to Colonel Anderson.

XQ. 1451. Mr. Garvan, under the order issued by Mr. Polk of February 26th and the subsequent order of April 5th, the Alien Property Custodian is authorized to sell to the Chemical Foundation, upon such terms and conditions as the Alien Property Custodian or his authorized agent may deem proper, all letters patent,

trade-marks and rights under letters patent and trade-marks, including all profits and damages recoverable at law or in equity for the past infringement thereof, which the Alien Property Custodian may seize or may have seized under the provisions of said Trading with the Enemy Act and amendments thereto now or hereafter enacted, and which he from time to time shall determine to relate to the objects and purposes of said Chemical Foundation, Inc., expressed and defined in its charter.

Among the patents so assigned to the Chemical Foundation, I find the following, and I will ask you in what respect they relate to the objects and purposes of the Chemical Foundation as expressed and defined in its charter: First, under Patent No. 13,085, dated March 8, 1915, cigar mouthpieces?

A. Those are abandoned. Those were never issued.

XQ. 1452. That is not the question I asked you. I asked you what was the relation, how they related to the purposes and objects of the Chemical Foundation as described in its charter.

A. I could not tell you. It may have been a cigar mouthpiece for a man smoking a cigar with a gas mask, I don't know.

XQ. 1453. I won't take the time to call the numbers and dates of the patents because they can be identified in Exhibit G, but I will only call out the subject and ask you how it relates to the purposes and objects of the Chemical Foundation. Methods of making mouthpiece oval cigarettes?

A. I don't know.

XQ. 1454. Flexible metal hose?

A. I don't know.

XQ. 1455. Boarding machines?

A. I don't know.

XQ. 1456. Optical reversing system?

A. That certainly refers.

XQ. 1457. In what respect?

A. They are all chemical, optical lenses, and also, it is the highest development of the chemical art.

XQ. 1458. An optical lens is a part of the chemical art, is it?

A. Why, certainly.

XQ. 1459. Photographic projections?

A. Certainly.

XQ. 1460. You think they refer?

A. Surely.

XQ. 1461. Galilean telescope lens system?

A. Certainly that would be the same.

XQ. 1462. Acromatic spectacle glass?

A. Yes.

XQ. 1463. Magnifying glass?

A. Yes, sir.

XQ. 1464. Would you say that that referred to it?

A. Oh, yes. That is the highest development of the chemical art, the manufacture of those high-grade glasses.

XQ. 1465. Telescopes?

A. Surely.

XQ. 1466. You would say that related to the chemical business?

A. Surely.

XQ. 1467. Calculating machines?

A. I don't know what they are for calculating. They may have been for measuring chemicals. I don't know.

XQ. 1468. You don't know what they relate to?

A. No.

XQ. 1469. Optical instruments and certain specified scientific appliances?

A. Certainly.

XQ. 1470. Dental drilling machines. Would they refer to the chemical business?

A. I don't know, sir.

XQ. 1471. Field glasses?

A. Yes, sir; certainly.

XQ. 1472. Calculating and adding machines?

A. It might.

XQ. 1473. They might?

A. Might.

XQ. 1474. You cannot say that they do?

A. No, I cannot.

XQ. 1475. Surveying, photographic and optical apparatus. Does surveying apparatus relate to the chemical industry?

A. If it was glass.

XQ. 1476. Compass for ships and the like. Does a compass relate to the chemical industry?

A. I don't know.

XQ. 1477. Again, compasses for ships?

A. There may have been some chemical part of it. I don't know.

MR. KRESEL: Those were taken over on account of the Navy's request?

MR. ANDERSON: No, sir.

XQ. 1478. Gyroscopic compass?

A. Those are all the Navy.

XQ. 1479. Taken over on the 28th of March, 1919, and assigned in April, 1919?

A. Assigned when?

XQ. 1480. April, 1919. Gyroscopic compasses?

A. I don't know. I could not tell you.

XQ. 1481. Suspension and rotating apparatus and magnetic compasses?

A. I could not tell you.

XQ. 1482. Artificial horizon; method of gyroscopic control?

A. Is that part of the Navy's gyroscopic apparatus?

XQ. 1483. I don't know. Does that relate to the purposes and objects of the Chemical Foundation?

A. I think so.

XQ. 1484. You would say it related to the purposes and objects. In what respect? A gyroscopic control you would say was used on Navy ships, would you not?

A. The Navy reported to me that they thought it would be expeditious for the Chemical Foundation to take it over; and I did so. That is up to the Navy.

XQ. 1485. Do you know whether that was in the list in G-3 or not?

A. Whether that was what?

XQ. 1486. Do you know whether that was included in the list of assignment G-3 or not?

A. I do not know what assignment G-3 is.

MR. KRESEL: What is G-3?

MR. ANDERSON: That is the schedule with the assignment that you had up in June or July, 1919.

XQ. 1487. Balloon envelope material?

A. Yes, that certainly is.

XQ. 1488. That is certainly chemical business, is it?

A. Probably covered with dope which was all chemical to make it water-tight and fire-tight and all that.

XQ. 1489. Apparatus for cutting plate glass?

A. I don't know. They may have had plate glass used in chemical manufacture; I do not know.

XQ. 1490. Ice cutting machine?

A. I don't know. That is probably for ships of the Navy. I don't know.

XQ. 1491. Process and apparatus for construction of slabs of artificial stone?

A. Surely, that would be chemical.

XQ. 1492. That would?

A. Certainly. It would be a chemical process.

XQ. 1493. Press for making briquettes and the like?

A. Surely, that is all chemical.

XQ. 1494. That is a piece of machinery, isn't it?

A. What?

XQ. 1495. Press for making briquettes?

A. I suppose part of a process for making briquettes.

XQ. 1496. Prop for mines?

A. I don't know. I assume that was the Government's.

XQ. 1497. You assume?

A. Yes, I don't know.

XQ. 1498. Making fish sausage?

A. I don't know. I should think it would be chemical.

MR. KRESEL: Probably a fertilizer.

XQ. 1499. Apparatus for moistening and warming rooms or apartments?

A. I don't know. I suppose that is for the apartments of ships.

XQ. 1500. Why do you suppose that is for apartments of ships, Mr. Garvan?

A. Because I don't think we would be looking for it as a chemical patent. You can't tell from that description. You can't tell a thing from that description.

XQ. 1501. How about a centrifugal machine?

A. You can't tell.

XQ. 1502. What?

A. It may be a centrifugal machine for stirring vat colors, to make the vat colors. You can't tell. I can't tell.

XQ. 1503. That is part of the machinery of a plant, is it?

A. Undoubtedly, it would be. Mr. Holdermann testified as to lots of apparatus and machinery. I can't tell from what you read off. I would have to get the patent and then I would have to get an expert.

XQ. 1504. I see. What did you have before you when you executed that assignment?

MR. KRESEL: Which assignment?

MR. ANDERSON: The assignment of April 10th, in which most of these things I have read were embraced.

A. Gyroscopes, all those things, were not in there. I had a list of the patents made up by the people under me.

XQ. 1505. But this is taken from a schedule in the exhibit introduced in evidence here and that is a copy of the schedule that accompanied that list?

A. I don't know whether it is or not. I don't know anything about it.

XQ. 1506. Did you ever examine any of these patents personally?

A. Oh, yes.

XQ. 1507. How many of them?

A. Oh, I can't tell. As they were applied for and it became a matter of the business of the Foundation, I would look at them.

XQ. 1508. That was after they were assigned?

A. Then we would keep a chemist there.

XQ. 1509. I am talking now of the time that the assignment was made.

A. Did I personally pass on the chemical application of these things? Of course not. In the first place, I am not a patent lawyer. In the second place, I am not a chemist.

XQ. 1510. You signed these assignments with these large lists attached as they were brought to you, did you not?

A. Certainly, after consultation with the men of my force.

XQ. 1511. I will call attention to one or two more and shorten it: Construction of frozen walls for shafts of mines. What would be the connection of that?

A. That would undoubtedly be an ammonia proposition, a frozen proposition. That would be a chemical proposition.

XQ. 1512. A self-propelled airship?

A. I think that would be purely chemical.

XQ. 1513. An airship is purely chemical business?

A. Self-propelled——

XQ. 1514. An airship is purley chemical business?

A. Probably propelled by some chemical.

XQ. 1515. A patent for a self-propelled airship you would regard as part of the business of the Chemical Foundation?

A. Why, a most essential part. If they had a self-propelled airship, where would we be in our safety?

XQ. 1516. Screw propellers?

A. What about them?

XQ. 1517. Would you say that those related to the Chemical Foundation?

A. It would depend upon what they were used in connection with. If they were used in connection with a self-propelled airship propelled by some chemical, I certainly think so. I don't know.

XQ. 1518. Propelling and steering apparatus for baloons?

A. Surely.

XQ. 1519. Armoured aerial machine?

A. Surely.

XQ. 1520. A toy airship?

A. I do not suppose that means an airship for a

child to play with. I suppose it means one of these airships that the Government has been working on so many years and spending so much money on that will go by themselves.

XQ. 1521. Safety anchors for airships and the like?

A. There probably is something chemical about them.

XQ. 1522. Mr. Garvan, do you know anything about them at all?

A. No, but I trust my own Government; I trust the people that picked them out, and I do not criticize them at the behest of foreigners.

XQ. 1523. I see. I will ask you this question before I take up the next point: How did you determine that these matters related to the purposes and objects of the Chemical Foundation? What procedure did you follow?

A. I relied upon the advice of my assistants and consulted with the chemists and people in the industry, and so forth, and so on, who were patent lawyers, who examined the patents.

XQ. 1524. It appears in the evidence here that copies of the patents were consulted by Messrs. Barrows and Squair, and then that the papers for seizure and examination of title was made by Mr. Gordon. Are those the gentlemen to whom you refer as having relied upon?

A. No, sir, not altogether.

XQ. 1525. Whom else did you rely upon?

A. Mr. Hoguet.

XQ. 1526. Relied upon Mr. Hoguet. Mr. Hoguet went over the patents. The testimony is that he eliminated what he wanted to eliminate. I think that is Mr. Gordon's testimony.

XQ. 1527. I am asking you now what you did?

A. They got the list, in the first place, from the

Federal Trade Commission, who had had I do not know what amount of work done to pick out the chemical patents.

XQ. 1528. But you do not know——

A. They were in consultation with everybody who was fighting the war. The Army was in there——

XQ. 1529. Hold on; one minute; I am not asking you what they did.

A. Oh, I did not.

XQ. 1530. I am asking you what you did.

A. I can not determine what a patent covers, nor am I a chemist.

XQ. 1531. Whom did you rely upon; name the specific persons in reaching that determination?

A. Mr. Hoguet and Mr. Gordon and the Navy and the Army, and the other things where they definitely came to me.

XQ. 1532. I call your attention to Defendant's Exhibit No. 91, entitled "Statement of Income and Expenses of the Chemical Foundation."

A. Exhibit 91, yes, sir.

XQ. 1533. Did you make that statement?

A. It was made under my direction.

XQ. 1534. Did you yourself check it with your books of account?

A. No, sir.

XQ. 1535. Are you an accountant?

A. Yes, sir.

XQ. 1536. Did you check it with the original records?

A. I beg your pardon?

XQ. 1537. Did you check it with any original records?

A. With the original records of the Foundation?

(No. Q.'s 1538-1557, inc.)

XQ. 1558. Yes.

A. No, sir.

XQ. 1559. Your testimony on that statement was based entirely upon what was told you by your accountants, was it not?

A. Practically. I have been over each of those items in the management from time to time. That don't mean I can swear that they are correct to the penny, or anything of that kind. They were made up under my direction from our books.

XQ. 1560. Mr. Garvan, do you know anything about that statement except what was told you by your accountants?

A. I know in general that it would be correct, but I cannot know that it is definitely accurate.

XQ. 1561. You can not know that it is definitely accurate?

A. Mr. Buffum could testify to that.

XQ. 1562. I now refer you to statement Defendant's Exhibit 91-A.

A. Yes, sir.

XQ. 1563. Do you make the same statement as to that as you made to Defendant's Exhibit No. 91?

A. No, I have a good deal more acquaintance with that. I know most of the number of copies and what they cost; but at the same time I am not equipped to swear that that is a definite and accurate statement.

XQ. 1564. You are not equipped to swear to that?

A. No.

MR. KRESEL: Colonel, that was brought out on his direct, you will recall, and I said that I had the gentleman who made them up in Court and would call him.

MR. ANDERSON: The evidence has gone in, however, and I have got to develop that, and then I am going to make a motion, Mr. Kresel. It is just to develop that.

MR. KRESEL: In other words, you do not need to waste time on it.

XQ. 1565. I will ask you if you are prepared to make the same general statement as to each of these statements.

A. Certainly. They were prepared under my direction. I went over them after they were prepared, and in some instances checked up the calculations which would appear upon the face of them; but as to their bookkeeping accuracy, of course, I cannot testify.

XQ. 1566. As a matter of fact, these statements are taken from a report of your expert accountants, are they not?

A. No, they are taken from our books.

XQ. 1567. I mean, these particular statements are part of a report of your expert accountants in that large manuscript form we had here, are they not?

A. Not all of them. You did not have all those calculations.

MR. ANDERSON: If your Honor please, I do not want to take up time to cross-examine Mr. Garvan as to these statements and matters appearing therein in view of his statement, because naturally he would have to answer that he did not know as to the accuracy of those various statements, and it would be a waste of time, in my judgment. Therefore, I shall make a motion to strike out each and all of these exhibits and all of the evidence of the witness relating thereto, unless counsel for the defendant produces a witness who can testify to their accuracy from the records, in which event I have no objection to their remaining in the record to be properly supported by other evidence, and then reserving the right to cross-examine as to them.

MR. KRESEL: I have already stated, and I re-

peat again, that I shall call the accountant who made them up.

THE COURT: This was all gone over at the time the papers were put in evidence during the examination-in-chief, and notice then given of such motion if the defendant failed to call the accountant. Defendant now says that it will call the accountant.

MR. ANDERSON: I do not want to insist upon the motion at this time. I merely want to make it to make my record right, to the end that the situation may stand, and I do not want it stricken out if it is going to be supported.

THE COURT: Very well.

XQ. 1568. Mr. Garvan, you stated I believe, you had only had one infringement suit on the part of the Chemical Foundation?

A. One that came to court. We have had lots of them that were infringers.

XQ. 1569. Your accounts will show, when the accountant goes on the stand, all of those facts, will they not?

A. Surely.

XQ. 1570. And what they settled for, and everything?

A. Everything, yes, sir.

XQ. 1571. If that is the case, I will not bother to ask you about it. What arrangement have you for checking up the business of the licensees, and what check have you made upon their business to see if they report their earnings under the licenses, or whether they are infringing the patents covered by the licenses?

A. They allow our accountants to go over their books each quarter. We have full access to all their books.

XQ. 1572. And your accountants do that checking, do they?

A. Yes, sir. They render the account at the end of the quarter. For instance, at the end of this quarter, which ends July 1st, they have until August 1st to account, and then we are permitted after August 1st, after they have rendered their account, to go to their books and check up the accuracy of it, if we have any doubt about it. We have no trouble with that.

XQ. 1573. Did not some of the licensees refuse to pay for licenses to the Chemical Foundation, licensees of the Federal Trade Commission?

MR. KRESEL: When?

MR. ANDERSON: After the transfer of these patents.

A. I do not think so.

XQ. 1574. You do not recall whether they did or not?

A. It may have taken some education—I do not remember any trouble. We had some trouble at the beginning of this suit, but only for a little while. I might. You may refresh my recollection on that.

XQ. 1575. Your accountants do not undertake to check the processes of manufacture, of course?

A. Oh, we could not do that, no.

XQ. 1576. You have never undertaken to check that at all, have you?

A. Oh, it would be impossible for us to do that. Most of them have processes, have them sealed, you know; you couldn't.

XQ. 1577. In your answer, clause XLII, paragraph (i), you say:

> "That the principal means whereby said German cartel, trust, or monopoly and the German Government accomplished their said control, domination and oppression, and the principal barrier which stood in the way of the development of an independent and self-sufficient organic chemical industry in the United States, consisted of the

United States patents and patent rights then owned and possessed by German nationals."

Is that true?

A. Certainly.

XQ. 1578. You swore to that answer, did you not?

A. Yes, sir; I think so.

XQ. 1579. Again, in clause LII, pages 40-41 of your Answer, you say:

"In order effectively to carry out the intent and terms of said sale and the objects of its charter, the defendant at great expense catalogued and circulated among manufacturers and others who might be interested therein, lists of the patents and other rights so sold to it by the Alien Property Custodian as aforesaid, together with information concerning their availability and usefulness. In cases of inventions which it seemed especially important to have rapidly and thoroughly developed, from the standpoint of the industry, public welfare, or common defense, it caused special study and research to be conducted in order to determine the availability thereof and caused its findings to be made known to the industry, and urged American concerns to manufacture under such patents. As a result thereof, to this date licenses under 422 of the patents so sold, assigned and transferred to it have been issued, non-exclusively, to a large number of American manufacturers, who have operated and continue to operate thereunder, and who, in the course of said operations, have expended millions of dollars in research and experimentation and the erection of necessary plants for the exploitation of the patents so licensed to them. Many of the chemical products which are now abundantly manufactured in the United States under such licenses were not heretofore produced in the United States, or were produced only in quantities wholly insufficient for domestic consumption and the needs of the common defense. Largely as a result of the licensing and other activities of the defendant, American

manufacturers are now able to provide for approximately ninety per cent. of the needs of the people of the United States for colors and dyes, as to which, prior to said war and the sale, assignment and transfer of said patents to the defendant, the American people were entirely dependent upon importations from Germany. Many of the products now abundantly produced under said licenses are chemicals which during the late war demonstrated their importance as basic elements of explosives and of modern defensive or offensive warfare, and others are of great value as therapeutic agents, and the ability to produce such chemicals abundantly and quickly is essential to the common defense and general safety of the United States and its people."

Is that true?

A. Yes, sir.

XQ. 1580. You were asked as to the clauses in the original assignment and subsequent assignments, to the effect that the assignments were absolute without reservation on account of anything in the charter or by-laws of the Chemical Foundation or otherwise; but your attention was not drawn to your general assignment, or attempted confirmatory assignment, dated the first day of March, 1921, which is in the record as Exhibit I of the bill of complaint, and has been introduced in evidence. I note that this clause is not in this assignment.

A. No, sir.

XQ. 1581. Do you not know that it was stricken out on the express objection of the then general counsel of the Alien Property Custodian, Mr. Boggs?

A. Yes, Mr. Boggs said he thought the fears of the patent lawyers were unfounded.

MR. ANDERSON: I move to strike that out, if your Honor please. What Mr. Boggs said is a matter of record.

THE COURT: Motion granted.

THE WITNESS: I beg your pardon.

XQ. 1582. It was stricken out on the express objection of Mr. Boggs?

A. My own lawyer, Mr. Boggs.

(No Q.'s 1583-92, inc.)

XQ. 1593. He was your counsel as Alien Property Custodian at that time?

A. Yes, sir. It was put in on the advice of my counsel in the first place, and taken out at the advice of later counsel.

MR. ANDERSON: I think that is all I want to ask the witness.

MR. KRESEL: I have only two or three questions, your Honor, if I may finish with the witness.

RE-DIRECT EXAMINATION.

By MR. KRESEL:

RDQ. 1594. Mr. Garvan, something was said, I think, in your cross-examination about the bills that were pending before Congress in the matter of protecting this chemical industry. I think you said that there was a dye embargo.

A. Called a selective dye embargo.

RDQ. 1595. I would like to ask you for how long a period that remained?

A. It took different forms in the wording of the bill; but the idea of selective embargo remained until September 10th, 1922, the date that the present tariff bill went into effect.

RDQ. 1596. You were asked this morning whether the Chemical Foundation——

MR. ANDERSON: Mr. Kresel, I did not hear what you just asked the witness. Would you mind repeating it to me off the record?

(Statement by Mr. Kresel off the record.)

MR. KRESEL: Suppose you explain it, Mr. Garvan.

THE WITNESS: After the war was over the President abolished the War Trade Board, preserving the Chemical Section, and transferred it to the Secretary of State's office in order to protect this industry, and the Secretary of State's office, under the President's directions at that time, allowed in what dyes and chemicals we did not make. Then Congress continued appropriations for that work and then passed a three months' temporary selective embargo of this kind while they were dickering about a permanent bill——

MR. KRESEL: Permanent tariff?

THE WITNESS: —and then at the end of that three months the joint resolution was again extended until the passage and going into effect of the big tariff bill.

MR. ANDERSON: The contents of those things are all acts of Congress, are they not?

MR. KRESEL: Yes.

THE WITNESS: Well, of course, they were acts of the President. The President did it under the war power of continuing the War Trade Board and sending it over under the Secretary of State to enforce until such time as Congress put it into the—I think it is called the Emergency Tariff Bill, the first one.

RDQ. 1596. (Continued.) You were asked this morning as to whether the Chemical Foundation charged an import royalty on the importation from countries other than Germany of chemicals and dyes manufactured under the patents conveyed by the Alien Property Custodian to the Chemical Foundation?

A. Yes, sir.

RDQ. 1597. My question is whether, in point of fact, any such chemicals or dyes have been imported

from any other country; either England or Switzerland, I think were the two that were mentioned. In other words, does England or Switzerland manufacture any of those dyes under these patents?

A. No, sir. The only possible modification of that might be that some of the reparations dyes which Italy got, for instance, they have re-sold into this country; but none of the goods manufactured in countries other than Germany have come in here which come under our patents.

RDQ. 1598. You were asked this morning whether you did not know at the time of the sale of these patents to the Chemical Foundation that several manufacturers were operating under Federal Trade Commission licenses and actually making salvarsan, and you stated that you did know that. Do you recall that?

A. Yes, sir.

RDQ. 1599. Did you know at that time that by reason of the imposition of a five per cent. royalty under the Federal Trade Commission license any manufacturer operating under such a license, should the Germans be permitted to import here, would have a differential of twice the amount of the royalty that he was paid?

Mr. Anderson: If your Honor please, I object to that question as purely leading, and not only that, but it is an argument that counsel can make from the record. The record is all here, the Federal Trade Commission licenses. It is a leading question so framed that the witness can answer yes to a long argument, to confirm an argument on the record. I object to it.

Mr. Kresel: I admit that it is leading, your Honor, and I think I have a right on re-direct to lead him on questions that were brought out on cross-examination. However, I did not intend to

make it leading, because the witness does not need to be led on this matter.

THE COURT: Read the first few words of the question.

(First few words of question repeated as above recorded.)

THE COURT: Is it a matter of argument?

MR. ANDERSON: No, sir.

THE COURT: Then it is a question of fact.

MR. ANDERSON: "Did you know at that time"——

THE COURT: Yes.

MR. ANDERSON: But if he says "yes," then all the balance of it is argument.

THE COURT: You said two things; first, it is leading. On that ground your objection is well taken. Second, you stated it was a matter of argument.

MR. ANDERSON: What I mean is it is a matter of argument from the existing records.

THE COURT: But it is not a matter of argument as to whether this witness knows it.

MR. ANDERSON: I meant the subject matter of the question was a matter of argument.

MR. KRESEL: Do you press the objection that the question is leading?

MR. ANDERSON: Yes.

MR. KRESEL: All right.

RDQ. 1600. Did you or did you not know at that time of the effect of the imposition of this royalty fee with respect to the ability of the American manufacturer to compete with the German importer?

A. I certainly did.

RDQ. 1601. And what did you know about it?

A. I knew that the German importer would have a tremendous advantage, of course.

RDQ. 1602. You were questioned this morning

about fees paid to lawyers, especially a fee paid to Judge Ingraham. Who fixed that fee originally?

A. I think I did. I think he rendered his bill to me and I think I approved of it.

RDQ. 1603. What was the case?

A. I am not sure whether that went before the Board of Directors first or not.

RDQ. 1604. The board of directors of what company?

A. The Botany Worsted Company.

RDQ. 1605. What was the nature of the action in which this bill for services was rendered?

A. That was a bill which involved the whole question of the title of the Alien Property Custodian to a nine million dollar corporation.

RDQ. 1606. Was the case tried and appealed and did it go to the United States Supreme Court?

A. It went to the United States Supreme Court and Judge Ingraham there argued it, arguing it also in the Court of Appeals, as I remember. I know he did. I was present in the Supreme Court.

MR. KRESEL: That is all. Colonel, here is this list of the Advisory Committee. It appears in the minutes, so we do not need to supply it.

(Witness excused.)

JOSEPH H. CHOATE, JR.

JOSEPH H. CHOATE, JR., called as a witness in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 1. Please give your full name and address?

A. Joseph H. Choate, Jr. My business address is 60 Wall Street, New York City.

Q. 2. And you are by profession a lawyer?

A. Yes.

Q. 3. How long have you been admitted to the Bar?

A. Since 1902.

Q. 4. Were you at any time connected with the Alien Property Custodian's office?

A. I was, unofficially.

Q. 5. Beginning when?

A. Beginning in the early part of 1918. I can not place the exact date; but I think it was somewhere between the end of February and the middle of March.

Q. 6. And for how long a period did you continue to be associated with that office?

A. Until the spring of 1919, again at an indefinite date, because I gradually wound up my work there and began to take up my ordinary law practice again.

Q. 7. You say "unofficially" you were connected. Were you under a salary?

A. No.

Q. 8. Did you receive any compensation for your work?

A. None whatever.

Q. 9. How did you come to be connected with the office? Were you asked to?

A. I was asked by Mr. Garvan to undertake the work of the Bureau of Investigation as far as it concerned the chemical industry in the United States.

Q. 10. What was the nature of the work that you performed during this period that you were connected with the Custodian's office?

A. The object of the work was to discover as far as possible all German ownership in American chemical enterprises and the nature of the work was the carrying out of every form of investigation which suggested itself and was possible looking toward that end.

Q. 11. Will you briefly describe the nature of the investigation, just what you did, briefly?

A. When I came there, the Bureau of Investigation had already been going for several months and there was already a considerable mass of information in the office. My first task was to acquaint myself with that information.

For example, I found that three of the representatives of the "Big Six," the Kalle Company, the Berlin Company and the Bayer Company, had all been taken over, and the papers relating to them were in the office. There was also a considerable mass of other material which could be studied and which gave leads in various directions.

These papers suggested various informants who could give further information on general subjects and also suggested literature from which information could be derived; and I proceeded to read that literature and consult those informants.

As leads were gradually developed suggesting the existence of German ownership in various American companies, I would communicate with those companies and ask them to send a representative to the office with his books. Those requests were almost always complied with; and an examination of the representative and of the books would reveal further information which, spreading like a wave, suggested in turn new leads and new possibilities from which information could be derived.

Q. 12. And were you engaged in the work exclusively during the whole period that you were with the Alien Property Custodian?

A. In nothing else from the time I went in until certainly the first of March, 1919.

Q. 13. Did you embody the result of your investigations in a report?

A. I did.

Q. 14. Is that report of yours contained in Defendant's Exhibit No. 30?

A. I think that is the number.

Q. 15. You are familiar with Mr. Palmer's report?

A. Yes. The chemical chapter of that report is substantially the report I made to Mr. Palmer for the purpose; and it includes not only the results of my investigations, but also the results of the investigations by the Bureau of Investigation before I had a part in it.

Q. 16. And is the report a true and correct report of the results of your investigations?

A. It is. It was as accurate as I could make it. I have not given you by any means the full sources of information which we had, if you want a fuller statement of them.

Q. 17. I quite understand, but I think it is sufficient; and if the Government desires any further information, of course, you will give it. It has been testified here that you took part in certain conferences preceding the sale of the patents by the Alien Property Custodian to the Chemical Foundation. You have been in court and heard the testimony?

A. I have.

Q. 18. Did you take part in such conferences?

A. I did.

Q. 19. At such conferences do you recall whether the question of the price to be paid for these patents was discussed?

MR. ANDERSON: Mr. Kresel, would you make it specific as to date, time, and so forth?

MR. KRESEL: Yes, I will withdraw the question.

MR. ANDERSON: Without having us go all over it again. It will save us time.

Q. 20. Were you or were you not present at any

conferences at which the question of the amount to be paid for these patents was discussed?

A. I should say I was present at several such conferences.

Q. 21. Will you be good enough to give us your best recollection of the first conference when the question was discussed, giving the date?

A. I could not possibly give the date.

Q. 22. Approximately?

A. I should say it must have been between the 27th of January, when the conference was held in the Washington office of the Alien Property Custodian, and the 4th of February, when the meeting of the Manufacturing Chemists' Association was held to consider the plan.

Q. 23. Before I ask you about those conferences, did you or did you not appear at a meeting of the Manufacturing Chemists' Association with reference to the disposition of these patents?

A. I did.

Q. 24. Can you give the date when you so appeared?

A. I could not, from my own unaided recollection. But I believe that the minutes of the association show that it was on February 4th, 1919.

MR. KRESEL: Are these minutes in?

MR. ANDERSON: Yes, sir.

A. (Continuing.) I have a definite recollection that it was about that time, but I could not give it precisely.

MR. ANDERSON: I think the date is correct, but it will be verified by the minutes.

MR. KRESEL: Very well then.

Q. 25. Directing your attention particularly to the question of price, please state whether or not you expressed any opinion at any of these conferences as

to whether the price of $250,000 was or was not a fair and reasonable consideration for the patents?

A. I undoubtedly did.

Q. 26. Will you state what you said upon the subject?

A. I expressed the opinion that the price of $250,000 was a fair and reasonable price under the circumstances.

Q. 27. Now I ask you to state what were the circumstances and what were the considerations that weighed with you in stating that in your opinion $250,000 was a fair and reasonable price for these patents?

A. Those considerations were of two general classes. The first class related to the precise conditions of the sale which was being undertaken. Those, of course, included the fact that the sale was to be made subject to an obligation to issue non-exclusive licenses and on reasonable, equal terms to all qualified American manufacturers; and the obligation to license the Government under all the patents; and a limitation of the profits, of the use of the profits, I may say, so that all over six per cent. on all the stock of the proposed corporation should be used for the advancement of science. Those three considerations went to this particular sale.

But there were a number of other considerations relating to the value of these patents that made me feel the value of them, outside of the question of this sale altogether, was very low—the fair value was very low. In the first place, my understanding was, and it had been confirmed from some experiences I have had in my own professional work, that all chemical patents were particularly open to two defects or two difficulties, one was the exceeding difficulty of making a description which would hold water when the patent came to be tested, the other was the extreme ease with

which chemical patents are superseded, the rapidity of the advance of chemical science, and the frequency with which a valuable chemical disovery is improved upon so that it ceases to be of any value whatever.

Those considerations applied both to product patents and to process patents. Then in the next place I realized very strongly that these were group patents which had not been used in the United States, I think with the exception of some of the pharmaceuticals, and even those pharmaceuticals I think were chiefly among the Bayer patents which had been sold to the Grasselli Company. I knew of none which had actually been used in this country.

My understanding was that the value of a patent depends absolutely upon the place where it is to be used. You may have a patent of enormous value in one place which is utterly worthless in another. For example, the arc patents for nitrogen fixation were of vast value in Norway where cheap water power was available, were of no value whatever in Spain, and were probably of no value in this country. Where none of the patents had been used, I knew that every purchaser would be confronted with the certainty that he would have to guess as to the adaptability of the patent to our conditions, whether we had the facilities, the power supply, the labor habits, the manufacturing habits, and above all the supply of technical skill to work it.

The next great consideration and the last of these factors I have just named was that all these chemical patents relating to the organic chemical industry dealt with one of the most difficult commercial undertakings that I knew anything about. They required a kind of manufacturing skill which my investigation led me to believe was not present at all in the United States, and I found that such members of the industry as I consulted with held the same view. They required for

successful exploitation a supply of highly trained chemists, not only laboratory chemists but manufacturing chemists and trained laborers and foremen, who simply were not to be had here. It was my view that the value of these patents depended entirely upon the possibility of making money out of them, but you could not make money out of them unless you could manufacture cheaply, and that you could not manufacture cheaply unless you knew the job. That emphasizes the importance of the fact that these patents did not carry with them what has been described as the know-how.

On that I want to elaborate a little. In the ordinary case where anyone is buying a patent—and supposing now he is not buying it merely to get rid of a nuisance—he buys with the patent the experience of the previous owner, who is usually the inventor.

MR. ANDERSON: One minute, Mr. Choate. If your Honor please, I do not wish to interrupt this gentleman, but I do not think Mr. Choate has qualified as an expert, and I do not think he would claim to be an expert on patents. He is obviously speaking from hearsay and, in the next place, he is arguing this case from the witness stand. I do not think the question called for any such extended reply as this, and if I thought so I certainly would have objected.

These matters are matters of technical knowledge, and if we are going to have them testified to I think we should bring somebody here who has the technical knowledge, that we may get the foundation of the information on the subject. I do not want to interrupt Mr. Choate because his statement is a very interesting one to me; but I do think this is outside the testimony in the case.

THE COURT: I do not want to hear you, Mr. Kresel. I think not. As I understand your allega-

tion of the bill, Mr. Choate is one of those persons charged with conspiracy.

MR. ANDERSON: Yes.

THE COURT: He is now asked for his reasons and the facts upon which he based or reached the conclusion that $250,000 was a fair value, and he has told why he has thought it was the fair value under the circumstances and conditions imposed upon the purchaser. He is now proceeding to tell why he reached the conclusion it was a fair value apart from those conditions. You may proceed, Mr. Choate. Objection overruled.

A. (continued) Not only that, but he usually takes care to insert in the contract a provision entitling him to the free possession of improvements, since such improvements frequently destroy the entire value of the invention purchased.

Now, in this case the purchaser will be buying not merely the bare patent, without such assistance from the inventor, but he will be buying the extreme hostility of the inventor; that is, the extreme hostility of the mind most likely to produce the next invention, the next step in the art, which might render the patent purchased utterly valueless.

This again led to another consideration which to my mind led us to value the patents adversely. That is the certainty of litigation. No man could possibly buy these patents without being entirely certain that after the war he would meet a litigation to test the title to the patents which he purchased. I do not say that for a moment it entered into my mind that he would meet the particular sort of litigation which has arisen in this case, but I felt sure that the Germans would some day bring a suit.

Referring again to the reasons why I considered the absence of the know-how of such vital importance, my understanding of the manufacturing which had to

be carried out under these patents was this—and I think it is a matter of considerable consequence: The manufacture of organic chemicals is entirely different from ordinary mechanical manufacture. When a man makes plow-shares or chairs or any other manufacture requiring merely mechanical processes, he knows to a certainty that barring a small proportion of spoiled parts he will get 100 per cent. of his raw material in the form of finished goods. The manufacture of organic chemicals, particularly dyes, is something quite different. It consists in a series of consecutive processes in each of which a chemical reaction destroys all of the preceding raw materials, the materials which were raw materials for the preceding steps, and substitutes a new lot. Each of those processes is controllable by skill, the skill of those who have the knowledge of such manufacture. So that the yield of each step may run anywhere from 10 to 100 per cent. of the theoretical.

My understanding was that it was frequently the case in the manufacture of dyes that 9 to 12 of such consecutive processes had to take place and that unless you had a high degree of technical training among your workmen and your foremen, as well as your chemists, you might and probably would lose 90 per cent. in each step, so that by the time you had got 10 per cent. of 10 per cent. of 10 per cent. of 10 per cent., carrying it through nine steps, you would have almost nothing left; that this technical training did not exist in this country, did exist in great quantity in Germany, would have to be built up here by slow and gradual steps, and that until it was built up there was no possibility of effective competition with Germany and, for that matter, with Switzerland, where such skill also existed.

In addition to this my attention was directed to the fact that patents on chemical products or processes

are frequently valueless unless effectively grouped, that any one of these patents, any one patent covering a given process or a given product, unless protected by what might be called flank patents covering the obvious and less obvious probabilities of invention on the same line, would become absolutely worthless. We had no means with which to make the extremely exhaustive and expensive survey which would have been necessary of this vast mass of patents to determine whether they contain such groups, groups which would furnish adequate defense or the means of adequate defense.

In addition to all this, considering the patents from the point of view of something which might be sold at public auction or public sale, I had in mind the fact that the Alien Property Custodian was determined not to sell to anyone who could possibly become by the purchase a monopolist to any extent, and that this cut out from among the possible purchasers most of the strong chemical manufacturers in the country who would have been most interested in the possible purchase. He was also determined not to sell to a speculator, and while I knew it was almost impossible to detect a speculator, it also made it extremely probable that some possible bidders would be excluded.

I think that covers most of the grounds that I had in mind at that time. There was one more—or two more, really. One may be illustrated best by the case of Haber process patents. That was the fact that the entire value of these patents to any purchaser depended on the legislation of the United States; the very enactment of the Trading with the Enemy Act had in a sense cut out the monoply value of these patents and set up a bunch of possible competitors for any purchaser. In the case of all the process patents the termination of the war would let loose the whole of the German competition upon the purchaser of the patent.

In the case even of the product patents the purchaser would have to face the results of German research, which were totally unknown, during the war. So that unless strong protection of some sort by way of tariff, selective embargo or otherwise were enacted, I felt that no purchaser would feel he was getting much of any value in any one of these patents.

In the case of the vat dye patents there was the further fact that one whole group of such patents had already been sold to one purchaser, the Grasselli Chemical Company. I should say each of the Big Six in Germany developed its own line of those dye patents, each in a sense capable of filling the whole field of the work required from those dyes. It so happened that the indanthrene dyes of the Badische Company had become the most important. They were the first on the market, and as long as all the six German companies were in one combination it did not matter to them which was pushed with the greatest success in our markets. They were perfectly content, I assume, to have the chief value of the industry concentrated in the indanthrene colors of the Badische Company. But six separate sets of those vat dyes existed, each covered by a set of patents taken out by each of the six companies. My understanding was that the so-called algol vat colors of the Bayer Company could be developed to do all the work of the Badische dyes, the indanthrene dyes. These algol dyes had become separated from the mass and were in the hands of a strong company. They afterward went to the Chemical Foundation. Accordingly, I assumed those patents were less valuable to any purchaser by reason of the fact he had to compete not only with the possibilities of import from Germany and Switzerland, but also with manufacture under the algol patents by the Grasselli Company. I think that covers the ground.

Q. 28. You stated that you did appear before the

Manufacturing Chemists Association. Will you state whether or no you also were in communication with the American Dyes Institute?

A. Yes.

Q. 29. You know Mr. Hoguet?

A. I do.

Q. 30. Did or did not Mr. Hoguet participate in these conferences?

A. At the meeting of the Manufacturing Chemists Association on February 4th and at the meeting of the American Dyes Institute on February 7th Mr. Hoguet was present in each case and both he and I spoke explaining the plan for the Chemical Foundation. That was in 1919.

Q. 31. Do you know whether the suggestion for the sale of these patents, which was subsequently made to the Chemical Foundation, was first made by you and Mr. Hoguet, representing the Alien Property Custodian, or by representatives of the industry?

A. Do you mean for the specific sale, or for any sale?

Q. 32. For any sale.

A. I think it was made by the Alien Property Custodian representatives. I never heard a suggestion of it from outside until after it had been very completely discussed inside the office.

Q. 33. Mr. Choate, have you any interest in any chemical concerns?

A. I think not.

Q. 34. Did you at the time of this sale?

A. I did not. Wait a moment, I may have had a part ownership in some stock of the American Agricultural Chemical Company. That is purely a fertilizer concern which has nothing whatever to do with chemistry proper or organic chemistry in particular.

Q. 35. Did that concern have anything to do with the Chemical Foundation?

A. Nothing whatever.

MR. KRESEL: Colonel Anderson, you may examine Mr. Choate. And I say now I shall raise no objection to your examining him on cross on any subject, even though I did not cover it in my direct.

MR. ANDERSON: I do not think this would take me more than half an hour. I have my notes over at the office. I did not expect to reach Mr. Choate today for cross-examination. I will send for them.

THE COURT: Can we meet an hour earlier in the morning? Would that be agreeable to counsel?

MR. KRESEL: Anything that is agreeable to your Honor and to Colonel Anderson. Of course, I am very anxious to get along.

MR. ANDERSON: So am I, as anxious as I can be to get through. But I have not been well for a week and have been working under great difficulty.

THE COURT: Then the desire of the Government is that the session be adjourned until tomorrow morning at 8:30?

MR. ANDERSON: I would like it so, because it will take me about fifteen minutes to get my notes over here, and I do not think it will take very long in the morning to cross-examine.

THE COURT: We will adjourn now until 8:30 o'clock Standard time.

(Whereupon, at 3:45 P. M. Eastern Standard Time, adjournment was taken until tomorrow, July 6, 1923, at 8:30 o'clock A. M. Eastern Standard Time.)

TWENTY-SECOND DAY.

Wilmington, Delaware, July 6, 1923, at 8.30 o'clock A. M. Standard time.

Before:

HON. HUGH M. MORRIS, *U. S. District Judge.*

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

JOSEPH H. CHOATE, JR., resumed the stand.

THE WITNESS: If your Honor please, I note in reading the minutes two mistakes, one of which I am conscious was the use of a wrong word by me. The other, I think, is the stenographer's error. I would like to correct them if I may.

THE COURT: You may.

3151, the third line of the second paragraph at the middle of the page, where I say, "One may be illustrated best by the case of salvarsan." I meant to say there "by the case of the Haber process patents," as will appear by the rest of the passage. I was speaking of the fact that the value of these particular patents was adversely affected by the possibility of foreign competition, particularly German competition; and what I had in mind was the fact that the Haber process patents, being process patents, the purchaser would be exposed to the full brunt of the competition of the German Haber Air Nitrogen Works, as well as the German coke oven and by-product gas plant production of ammonia.

The other error is on page 3152, the eighth line from the bottom, where I am represented as

3155

saying, "They afterward went to the Chemical Foundation," referring to the algol vat dye patents purchased by the Grasselli Company. Of course, what I said was that they did not pass to the Chemical Foundation.

MR. ANDERSON: If your Honor please, my attention has been called to my answers to the inquiries of the Court on yesterday at pages 3047, and following; that one of my answers was possibly capable of a misconstruction. There was some interruption, and I changed the line of thought.

I wish to make it clear this morning that what I was intending to say at the time, to follow up what I did say, without going back over the discussion was this: Your Honor asked in effect whether the interests of the United States, commercial or possibly military (I may not state your Honor's language) could be considered as a consideration for this conveyance or as a part of the consideration of this conveyance. I was answering that question and there was another question asked and I diverted my thought to something else.

I wish to say that in my view and I shall contend here that the Alien Property Custodian had no right to consider the commercial or military interests of the United States, which was purely a question for Congress, and to the extent that that was treated as a consideration and reduced the price below the fair value of the property, it was confiscation and therefore illegal.

MR. KRESEL: Will your Honor pardon me, because I want to understand Colonel Anderson's position also. I wonder whether Colonel Anderson is drawing a distinction between the Alien Property Custodian and the President. Of course,

our contention is and will be that this sale was a sale authorized by the President and whatever was done was done under the directions of the President. Is it Colonel Anderson's position that the President had no right to consider the safety of the nation in making this sale? I wonder if Colonel Anderson would be willing to answer that question.

MR. ANDERSON: I am perfectly willing to answer it except that I do not want to get into an argument this morning, but merely wanted to finish up my statement of yesterday. I think I have developed the position of the plaintiff day by day here in elaborate arguments. The defendant has not developed its position in similar arguments. I might ask questions of counsel the same way, but I wish to say this in reply, as long as the Court has inquired on the subject.

In the first place, the Government contends that this transaction was not authorized by the President. That gets to the root of that inquiry. In the second place, the Government contends that the President of the United States has no more power to confiscate property than the Alien Property Custodian or any other officer and that the Constitution of the United States as to citizens of the United States is clear on that subject; and as to alien property, the law is well settled, that it can only be done, if at all, by Congress.

I may add to that, to make my position perfectly clear, that the question of what is the welfare of the United States, commercial or military, and what is necessary for the defense of the United States, is by the Constitution expressly vested in the Congress of the United States and that question is not one to be considered by an officer of the Executive Department like the Alien

Property Custodian; nor is it a question that can be considered by the courts.

THE COURT: Your last statement brings to mind a matter that I have had under consideration and that I have been trying to puzzle out in this case. I was just wondering why this suit was instituted at all in the name of the United States instead of the Alien Property Custodian if the title to these patents was in the Alien Property Custodian.

MR. ANDERSON: I will be very glad to answer that question, sir. The matter was carefully considered. Under the decisions of the Supreme Court of the United States and the line of cases illustrated perhaps by the United States v. Beebe, the Supreme Court has held that wherever a suit involved a public obligation or duty of the United States, whether it had a direct financial interest or not, or wherever it involved the interests of the United States, it was the duty of the United States to institute and maintain the suit; or at least that it had the authority to do so.

The view of the Government was that the Alien Property Custodian was only the hand of the United States to hold this property and therefore the United States was really charged with the obligations arising under this act and that it was its duty, it involved its public duty, its public obligations and its interests in a material way as representing the people of the United States, and it was the proper party to sue. That question was very carefully considered and that conclusion was reached after a most careful consideration of the authorities and the authorities, in our view fully sustained that conclusion. It is a very natural question because at first impulse, the same question arose in our minds.

THE COURT: In discussing the 5700 patents in which the Navy was given some interest I remember I remarked it seemed to me that was a transfer to itself. Then when you denied that I wondered how that was to be reconciled with the fact that this plaintiff is the United States. It was just a puzzle in my mind.

MR. ANDERSON: I did not intend to deny that it was a transfer to itself in the sense that your Honor is now discussing it.

THE COURT: No, I did not mean to lead you into that, Colonel Anderson. I have asked you numerous questions, because the plaintiff is seeking to change the status, you are seeking to set aside the sale. Until your pathway is marked out clearly and I get the bridge completed and understand your theories, it seems to me the burden is yours of marking out that pathway.

I shall have one or two questions to ask Mr. Kresel. For instance, some time when he has an opportunity of telling me I shall be very glad to have him tell me just how the chemical industry in the United States will be jeopardized by granting the prayer of your bill, assuming that you have made or will make out a title or a right in this case. I do not want that gone into now, and you understand fully that that question, no more than the preceding questions, indicates no conclusion in this case.

MR. ANDERSON: I quite understand, sir.

THE COURT: I desire to state that I have arrived at no conclusion on this case, because the fundamental question at the very threshold of this case is a construction of that statute and I have not re-read that statute and do not propose to reach a conclusion on that statute until after the argument may be had, on the 9th of October.

MR. ANDERSON: Your Honor will quite understand that whatever I have said did not apply to anything of that kind. I want to answer as far as I can, but for the past week I have not been at all well, and to answer offhand at the bar is sometimes difficult when your mind is on something else.

THE COURT: Yes, and when your mind is directed to one point rather than to a two-fold point. It seems to me the case is unique, and it has seemed to me if I am to thoroughly understand this case I must be helped during the time it is put in.

MR. ANDERSON: I appreciate that and am always glad to answer the questions.

THE COURT: I appreciate the patience you have displayed in view of the many questions that have been asked you.

MR. ANDERSON: I may say we quite agree the case is unique, and I may add that the Government regards it as a matter affecting its national and international rights and duties, and one of the most important litigations instituted for some time. It is my duty to help the Court in arriving at a sound conclusion.

THE COURT: I do not think any criticism can be laid to you for failure to do that.

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 36. Mr. Choate you have never been connected in any way with the dye and chemical business, prior to your association with the Alien Property Custodian's office?

A. No.

XQ. 37. You are not a patent lawyer in the sense

that that title is usually used in the profession, are you?

A. No.

XQ. 38. You had never been connected with the manufacture of dyestuffs or chemicals in any way?

A. No.

XQ. 39. Mr. Choate, I am going to ask you certain questions about your testimony and I hope you will understand that there is not implied any criticism of you whatever.

A. Certainly.

XQ. 40. I know you will understand that, but I want to state that for the benefit of everyone else, that I have not the slightest disposition to do it. You appeared before the Ways and Means Committee of the House of Representatives in the hearing which has been referred to here as the Hearing on H. R. 2706, did you not?

A. Yes.

XQ. 41. In that hearing the record states that you appeared as counsel for the Chemical Foundation and American Dyes Institute?

A. I did.

XQ. 42. At page 88 of that record I read you an answer to a question by the Chairman.

A. May I have a copy of it?

XQ. 43. If you wish to have that record before you.

"THE CHAIRMAN: Give the name of the company you represent to the stenographer.

"MR. CHOATE: I appear here as counsel for the Chemical Foundation, into which I shall go in a moment, and also I have been asked to represent the American Dyes Institute, which is an association of all the dye makers, or substantially all the important dye makers in the country, because they have exactly the same point of view presented by

the Chemical Foundation today and are therefore properly represented by the same counsel. I came into this case, gentlemen, through my service in the office of the Alien Property Custodian, as has been pointed out by Judge Covington."

That is your testimony, isn't it?

A. It was.

XQ. 44. And that was a fact at that time?

A. Yes.

XQ. 46. I believe you have been the general counsel of the Chemical Foundation since it was organized in 1919?

A. Since the day which appears by the minutes on which I was designated in that capacity.

XQ. 47. You also appeared in the hearings before the sub-committee of the Committee on the Judiciary of the United States Senate on what is known as Senate Resolution 77, I believe, and testified at that hearing?

A. Yes.

XQ. 48. Will you turn to page 528 of that hearing?

A. Yes.

XQ. 49. (Reading):

"THE CHAIRMAN: Yes; you may proceed.

"MR. CHOATE: Of course, Mr. Chairman, I have been familiar with almost all of the activities of the Chemical Foundation from the beginning, because I had a part in its organization and also in the action of the Alien Property Custodian with reference to it. That matter has been so fully covered by Mr. Garvan that I assume, except possibly in the way of cross-examination, you will not wish to ask me any questions in regard to it. Everything has been stated accurately by Mr. Garvan and the others, and documents relative to the subject have been produced. I shall not, therefore, go into that except in answer to questions.

"In regard to the activities of the American Dyes Institute, I also conceive that the entire ground has been covered, with the exception of the references made by Senator King to the trip to Paris which I undertook for the American Dyes Institute in the autumn of 1920. I do not know that Senator King made any definite statements in regard to that trip, but I felt that what he said makes it appropriate that that trip should be explained.

"THE CHAIRMAN: You went as the representative of what company or association?

"MR. CHOATE: Of the American Dyes Institute. I had been counsel for the American Dyes Institute since the spring of 1919; retained by them to present to the Congress and the appropriate committees the case for special protection for the American dye industry, and in that capacity I had a part in all of the legislative activities; and I shall be very glad, of course, to answer any questions which may occur to you as to any of those activities. I think, however, they have been sufficiently explained to date."

That is your testimony, is it not?

A. It was.

XQ. 50. And that is a fair statement of the facts as stated there, is it not?

A. I think so.

XQ. 51. It was in September, 1920, that you went to Paris as a representative of the American Dyes Institute, was it not?

A. I think the end of September of that year. Wait a moment. I think it was in October of that year that I went to Paris.

XQ. 52. Yes, about that time. Can you recall about when you first became counsel of the American Dyes Institute?

A. A short time before the hearing before the Ways and Means Committee in 1919. That would make it either in April or May of that year; April, I

think. It was after the conveyance of April 10th to the Foundation.

XQ. 53. I will next read to you from your testimony before the Ways and Means Committee on H. R. 2706. I believe you have the book. Will you turn to page 106?

A. Yes.

XQ. 54. (Reading):

"Now, as we came to a knowledge and realization of those conditions in the Alien Property Custodian's office, it began to seem to us that it was up to us to do something about it. We came to the conclusion that we were in a unique position; that we were probably the only people in the country who, without having the slightest interest in the making or consuming of dyes, had in reality some knowledge of the business and of its importance. And so, although it was none of our business, as members of the Alien Property Custodian's staff, but purely for what we conceived to be reasons of public spirit, all of us who had the knowledge thus derived there, very early began to scratch our heads to see if we could not find some way of helping this industry here and, if possible, saving it. For a long time we were very much discouraged in the existing condition of legislation and saw no help for it. The tariff, as I said, we were satisfied would have absolutely no effect whatsoever on the German trust. I am coming to that in more detail later. Without legislation, which we could see it would be very difficult to get, it seemed to us that almost nothing could be done.

"On further consideration, we began to study the patents. At that time the Trading with the Enemy Act did not enable the Alien Property Custodian to take over patents, and there they stood, 5000 of them, an impassable obstacle to the American manufacturer. As long as those patents existed, we could not manufacture the vital dyes on which every kind of industry depended. Accordingly we bestirred ourselves and repre-

sentations were made before Congress which resulted in the amendment of November 4, 1918, permitting the Alien Property Custodian to seize patents. Then the question arose what to do with them.

"MR. MOORE: I will ask you if there is anything in that law authorizing you to do anything with those patents to be seized?

"MR. CHOATE: In that law coupled with the existing law, the references from one to another give the power of sale.

"MR. MOORE: The Alien Property Custodian had a right, under the law as amended, to sell?

"MR. CHOATE: He undoubtedly did.

"MR. MOORE: I remember at the time of the passage of the act that was discussed, and I have since wondered just how he came to have that right and just how it was exercised.

"MR. HAWLEY: Did that transfer the property in the patent finally?

"MR. CHOATE: Finally, and once for all; just like any other piece of personal property.

"MR. HAWLEY: So the original German owner lost the patent?

"MR. CHOATE: The original German owner lost the patent absolutely, but received the right to get back whatever Congress saw fit to give him."

That is your testimony, is it not?

A. It is; that is to say, I suppose that question means that was my testimony given at that hearing.

XQ. 55. Yes, Mr. Choate, you understood this situation thoroughly at that time, I think you said yesterday.

A. Certainly. The only qualification I had to suggest was that it represents my conclusions and my beliefs at that time.

XQ. 56. Just after the original sale took place?

A. Oh, yes; and they are my beliefs at the present time, but as to a good deal of it, it is conclusion.

XQ. 57. On page 108, you were asked a question by Mr. Moore, about the middle of the page:

"MR. MOORE: These patents were the private property of our alien enemies?

"MR. CHOATE: Surely.

"MR. MOORE: They did not belong to the German Government except as it might be that the Kaiser personally had some interest in the patents; and being private property or corporate property as the case might be. What return can we make at the close of hostilities, in the peace settlement, for the property we have just taken and appropriated to ourselves or appropriated for the purposes of the Chemical Foundation, Inc.?

"MR. CHOATE: Gentlemen, that is for you gentlemen of Congress to say. We have nothing to say about it. It is a matter of legislative policy to say what form of justice shall be meted out to the Germans.

"MR. MOORE: But you have just stated that the idea originated with the Alien Property Custodian, who desired an amendment to the law in order that he might cover this very point for the purpose of seizure and sale.

"MR. CHOATE: In order that patents might be placed on precisely the same footing as other personal property.

"MR. MOORE: He is in position to make an accounting now, as Congress expected?

"MR. CHOATE: Yes; because the law requires that he shall make an accounting."

That is your testimony, is it not?

A. That was.

XQ. 58. And so far as you know, the facts stated there are the facts, are they not?

A. They represented my beliefs then and now.

XQ. 59. And further down at the bottom of the same page, I would read to you as follows. You were speaking of the Chemical Foundation.

"MR. MOORE: It is an American corporation effected under the auspices of a Government official, the Alien Property Custodian, and presided over by the present Alien Property Custodian, who has been placed in possession of these German rights, subject to such legislation as we may have enacted, which they propose to turn to their own use. That is the reason I bring the question up and I think it is very pertinent.

"MR. CHOATE: The patents have been sold precisely as necklaces, horses, and pictures, stocks, and bonds belonging to the Germans in this country have been sold.

"MR. MOORE: But they were not perishable like horses and cattle.

"MR. CHOATE: Some were extremely perishable; some had about expired.

"MR. MOORE: So far as stocks and bonds seized and sold is concerned you certainly have the proceeds somewhere.

"MR. CHOATE: We have the proceeds of the patents.

"MR. MOORE: And you are to account to Congress in due course of time.

"MR. CHOATE: The proceeds of the patents are in the hands of the Alien Property Custodian for the patents sold.

"MR. MOORE: What was paid for those patents?

"MR. CHOATE: $250,000.

"MR. MOORE: By an arrangement with the Alien Property Custodian, they were sold to the Chemical Foundation, Inc.?

"MR. CHOATE: Yes.

"MR. MOORE: He suggested this law in order to take them over?

"MR. CHOATE: Precisely.

"MR. MOORE: May I ask how the terms were fixed?

"MR. CHOATE: Those terms were fixed by guess-work in the same manner as an individual would value patents by guess-work."

That is your testimony in this hearing?

A. It was.

XQ. 60. If you will turn to page 110 of the same book, I will read your statement without going into the question, unless you desire it. In reply to a question by Mr. Moore you made the following statement:

> "To resume; something had to be done with those patents. The only thing the Alien Property Custodian had the power to do, without further help from Congress, was to sell them. Now the universal practice of the Alien Property Custodian's office was to Americanize the seized companies as far as he could by selling their securities, when found in German hands, to first rate competent American purchasers."

Was that your testimony?

A. Yes. When you say, "was that your testimony", perhaps it conveys the idea that it was the whole of my testimony on that subject. I so testified.

XQ. 61. I will put it that way. Did you so testify?

A. Yes, sir.

XQ. 62. I think probably your suggestion is a good one, because I have not read your entire testimony.

A. (No answer.)

XQ. 63. At page 506 of the same book, Mr. Choate, where the testimony related to the question of the character of the Chemical Foundation, Incorporated, I wish to read just two questions and answers at the middle of the page.

Question by Mr. Moore:

> "The Chemical Foundation (Inc.) was still a private corporation and is now?
>
> "Mr. Choate: It is still a private corporation technically, but as nearly public as could be organized.
>
> "Mr. Moore: And we have gone into it suf-

ficiently to show that the only relationship it has with the Government is that Government officials are connected with it?

"MR. CHOATE: That is all."

You so testified, did you not?

A. I did.

XQ. 64. You stated I think that that hearing, and it may appear of record, was in June and July of 1919?

A. That is right.

XQ. 65. Will you now get the book entitled "Dyestuffs Hearing, before the Committee on Finance of the United States, on H. R. 8078" frequently referred to in this case? I will ask you to refer to page 116, beginning about the middle of the page.

Question by Senator Watson:

"You did not limit it to German patents. You said all other chemical patents, and I wondered whether you included all those hereafter taken out.

"MR. CHOATE: Oh, no. The idea was suggested to a gathering of as many of the representative men in the industries as we could get together, and they went out and organized their corporation, the Chemical Foundation. Then there came up the question of how we were going to sell to it. The Alien Property Custodian, Mr. Palmer, and Mr. Garvan, were insistent that the sale should be by public auction. That was the ordinary way of disposing of German property, and it was the natural way, the generally desirable way.

"We found the representatives of the industries unanimously opposed to that course for reasons stated by them which finally convinced me and convinced Mr. Garvan and convinced Mr. Palmer; and those reasons were these: Having interested in the Chemical Foundation substantially all the principal manufacturers whose business was affected by these patents, it included nearly

all the possible manufacturers who might have been found at a public sale at auction as proper purchasers for the patents. Outside this group a legitimate purchaser, therefore, could hardly be found. But even if that had not been the case, had the patents been put up at auction, either the same thing would have happened as happened in the case of the Bayer patents, and they would have been bought in in one block or in a half dozen blocks or 40 blocks by manufacturers, and thus closed to the rest of the American industry, or else—and this we feared still more—they would have been bought in by speculators, who would have bought them for their nuisance value, out of which a speculator might well have made a handsome figure. It would have been impossible to detect and reject a speculator as purchaser, because he could easily have hidden under a perfectly respectable dummy or nominee.

"Accordingly, it was determined that it would be impossible and unsafe to put those patents up for public sale, and it was agreed that the matter should be presented to the President of the United States, with a request for an Executive order authorizing the private sale to the Chemical Foundation; and that was the course which was followed. The price of $250,000 that was fixed for the patents was, as you may well suppose, a guess. No human being could put a value on that block of patents; none of them had been used in this country, a very large proportion of them had not been used anywhere else. They were held for their nuisance value only, and no man could say what that nuisance value was. No one was disposed, I think, to lean backward in the way of overvaluing the nuisance value of a patent owned by an enemy, a nuisance value which reacted against an industry which we believed to be so important.

"Therefore, the figure of $250,000 was arrived at as the best obtainable guess on the part of anybody and the transaction was put through on that basis."

Was that your testimony?

A. I so testified.

XQ. 66. Mr. Choate, are you not mistaken there in saying that none of these patents were being used in this country, and is it not a fact that a number of them had been licensed by the Federal Trade Commission and were then being used under those licenses and in a number of cases there were contracts outstanding for the use of those patents which had been seized by the Alien Property Custodian?

A. I think there were exceptions. I think you are right. Federal Trade Commission licenses do not by any means represent the actual use in the country, because a great majority of these Federal Trade Commission licenses at that time represented hopes rather than existing practices. But in the case of salvarsan and the patents covered by the pre-war contracts, there had been some use made in the country.

Q. 67. I only wanted to make that perfectly accurate to conform with the record.

A. (No answer.)

Q. 68. I think you testified elsewhere and I will try to find the testimony if you desire, but it is merely to get the facts, that there had been invested by American manufacturers very large sums of money at that time in the development of the dye industry largely during the war under some of these patents and Federal Trade Commission licenses?

A. My opinion was that in research carried out in the endeavor to produce under the vat dye patents there had been very large sums expended by at least two manufacturers.

XQ. 69. And at that time the production of dyes in the United States was quite large, was it not?

A. Of dyes generally, yes.

XQ. 70. That is what I mean.

A. Not of the patented dyes.

XQ. 71. The record put in here of the Federal

Trade Commission income shows that considerable sums had been paid on account of the royalty of five per cent. on the production under those patents which were licensed. You are familiar with that evidence, are you not?

A. I have heard the evidence that has gone in here, but I do not recall evidence of any payments indicating receipts by anybody on patented dyes before the date of the conveyance.

XQ. 72. That, of course, would be a question of examining the evidence. I am not very sure on that question at all.

A. Certainly it would surprise me if I found now that anyone had made any money out of any patented dye before the first conveyance to the Chemical Foundation. I think the money was confined to pharmaceuticals.

XQ. 73. You spoke of arriving at the price of $250,000. Did you ever hear any other sum than $250,000 suggested?

A. Yes.

XQ. 74. What was it?

A. A figure of $500,000 was discussed with someone at some time before the final fixing of the price. Do you want my recollection in that regard?

XQ. 75. That replies to my question. If there is any other fact in connection with it that you feel should be given to make your answer complete, I have no objection whatever.

A. I recall a discussion with someone, I rather think it was Mr. Wigglesworth, who suggested that the sum of $500,000 had been suggested as the price, and he then informed me that that price was quite impossible, that the industry never could or would raise that price together with the necessary funds which would be required to protect the patents; and I think I re-

ceived the same information from several other persons whose names I can not now recall.

XQ. 76. You still have the book H.R. 2706 before you, have you not?

A. I have.

XQ. 77. At the bottom of page 117, in speaking of these German patents taken over by the Chemical Foundation, you were asked this question:

> "MR. GREEN: These companies, by virtue of their operation, whether in connection with these patents or not, and although while holding these patents have made immense profits in this country?"

He is referring to the German companies.

> "MR. CHOATE: Large profits, I should say.
> "MR. GREEN: And profits that both you and Mr. Garvan were aware of?
> "MR. CHOATE: Yes."

You so testified, did you not?

A. I did.

XQ. 78. Have you before you the hearings on the Tariff Act of 1921, H.R. 7456?

A. I have.

XQ. 79. Will you turn to page 518, please? Question by Senator Smoot:

> "SENATOR SMOOT: If I asked you, as my attorney, and you were not the attorney of the Chemical Foundation, whether I would be safe in buying all of the patents held by the foundation for $250,000 today, what would you tell me?
> "MR. CHOATE: I should tell you, in the first place, that the Chemical Foundation was incapable of selling the patents under its charter.
> "SENATOR SMOOT: As an attorney of the Chemical Foundation, do you think that $250,000 was all that those patents were worth?
> "MR. CHOATE: I think it was not all they would have been worth to a private purchaser, unlimited

in the use of them. A private purchaser unlimited in the use of these patents could have made very large sums by holding up the industry with them. Their nuisance value was very large.

"SENATOR SMOOT: There are patents there, outside of the nuisance value, that are worth a great deal more than $250,000.

"MR. CHOATE: To a private purchaser, undoubtedly, outside of the nuisance value; but you forget that the Chemical Foundation, both by the terms of its charter and by the terms of the Foundation, is absolutely limited in the use of these patents, so that it can not profit beyond the necessary sum to pay a six per cent. dividend on its very small stock; so that all the rest of the money that is received has got to be used for the advancement of science; and, furthermore, it is so limited that it can not use the patents in the way in which an individual would, by the issue of exclusive licenses. It can only issue nonexclusive licenses, which must be issued on equal and reasonable terms to all American citizens, partnerships, and corporations.

"SENATOR MOSES: These licensees have profited, have they not?

"MR. CHOATE: I hope they have."

You so testified, did you not?

A. I so stated, yes.

XQ. 80. That hearing took place in 1921, in August, did it not?

A. It did.

XQ. 81. And I believe, Mr. Choate, you represented the Chemical Foundation at that hearing?

A. No.

XQ. 82. Was it the American Dyes Institute?

A. American Dyes Institute only.

XQ. 83. Now I will ask you to turn to the book containing the hearings before the Ways and Means Committee on H.R. 2706, page 122. I read the following from your evidence. Question by Mr. Kitchin, who

I think it appears here was a member of the committee and a member of Congress.

"I just wanted it to appear on the record. Now, your company, after the purchase by this chemical company of these 1200 patents, was organized, and then the other patents were put on sale at public auction?

"MR. CHOATE: They were not sold by public sale by the Custodian, because it would have been impossible to do that for a variety of reasons. All the possible available bidders who could have bid in good faith for these patents as real manufacturers were already in the enterprise, because they were members of the American Dyes Institute. The only other kind of bidder there could have been would be a hold-up artist who would buy the patents either for the benefit of his own pocket or who would buy them to hold them up from use. It required an Executive order from the President to effect that transfer.

"MR. KITCHIN: I simply desire to get the facts on the record. Now, were these patents offered separately or were they en bloc?

"MR. CHOATE: Were they what?

"MR. KITCHIN: Offered separately, or were all the patents covering dyestuffs offered en bloc?

"MR. CHOATE: They were sold in one transaction to the Chemical Foundation.

"MR. KITCHIN: What was the actual amount of cash that was paid for them?

"MR. CHOATE: $250,000.

"MR. KITCHIN: You stated it before, but I want to get it in this connection. Now, did your patents cover any other part of the chemical products except dyestuffs?

"MR. CHOATE: Yes, sir; all chemical products we could lay our hands on, but it is only in the dyestuffs that the patents are of great importance—dye and pharmaceutical goods—because it is only there that the patent is especially important. They covered salvarsan and other products and all the rest that we could get our hands on.

"MR. KITCHIN: Did any of the manufacturers of this country have the advantage of these patents, or were they allowed to make without protest on the part of the Government or anyone dyestuffs under these patents during the war?

"MR. CHOATE: No, sir; but there was a provision in the 'Trading with the Enemy Act' that enabled them to get a license from the Federal Trade Commission, but under that provision they were required to pay a 5 per cent. royalty to be held by the Alien Property Custodian for the benefit of the German competitor after the war, and also to buy a lawsuit, because the act provided that there should be a determination by a court of how much more than 5 per cent. they should pay.

"MR. MOORE: Would the United States have suffered in the war if we had continued to hold those patents in the hands of the Alien Property Custodian until the close of the war?

"MR. CHOATE: In this war, I doubt it.

"MR. MOORE: They were of no avail to us during the war?

"MR. CHOATE: I think not

"MR. MOORE: And of course the Germans could not use them here?

"MR. CHOATE: It is a very difficult question, but I suppose that the patents on the dyestuffs products themselves would have little bearing on the war. It is their bearing on the dyestuff industry that gives them a colossal importance. We might have held all the property and given it back to the Germans."

Did you so testify?

A. I did.

XQ. 84. I will now ask you to turn to the Hearings on the Tariff Act of 1921, H. R. 7456, page 519, question by Senator Moses:

"SENATOR MOSES: Was there ever any intimation that a license would be refused?

"MR. CHOATE: At the outset the policy of the Foundation was not fully determined. It was real-

ized that it would be very unfortunate for the industry if a large number of licenses should be simultaneously issued covering the production of some product not previously made in this country, inasmuch as the issue of such a large number of licenses would discourage any of the licensees from actually putting money into the business and going to work; but it was very soon determined by a vote of the stockholders' advisory committee, consisting of all the stockholders, that the policy was unwise and improper and that there must be no limit to the number of licenses under any patent."

Did you so testify?

A. Yes.

XQ. 85. I believe you stated on yesterday that you wrote that chapter 2 of Mr. Palmer's report?

A. I did, substantially, as it was afterward transmitted to the President.

XQ. 86. And as it appears in Defendant's Exhibit 30 here?

A. Yes.

MR. ANDERSON: I have no further questions, if your Honor please.

THE COURT: Any re-direct, Mr. Kresel?

MR. KRESEL: No, your Honor. In view of the many extracts from Mr. Choate's testimony before all these committees that have been read by Colonel Anderson, I now desire to offer Mr. Choate's entire testimony before these committee's. It manifestly gives an imperfect picture of this witnesses's testimony before these committees, to take out a paragraph here and a sentence there. So I now offer as part of this witness's examination the testimony given by him before the Committee on Ways and Means of the House of Representatives. I shall indicate the pages. It commences at page 87 of this report,

and runs to—I will supply the pages in a minute, your Honor, as I understand Colonel Anderson has an objection to offer at this point.

MR. ANDERSON: If your Honor please, of course I object. I venture to say that in the whole range of the law no instance can be found in which a witness can be put on the stand and his testimony on a former occasion be offered by the party who put him on the stand.

I have tried to fairly question Mr. Choate on his testimony and have read a good deal from his testimony that was not pertinent to the questions I desired to ask, to the end that his statement might be as full on the point as I could make it. But to put in his entire testimony at a hearing before the Committee, as to some of which he was under oath and as to some of which he was not—not that I mean to imply that would make the slightest difference in his statement—and to put those statements in without cross-examination before the Committee, I think a matter that needs no argument. Therefore I make the objection without further argument on the subject.

MR. KRESEL: If we were to enforce the strict rules on the subject, your Honor I think will bear me out in the statement that the only purpose for which a witness' testimony in another proceeding or statement in another proceeding may be used against him on cross-examination, is for the purpose of contradiction, for the purpose of affecting his credibility, for the purpose of showing that upon another proceeding he made a statement contrary to what he states at the time he is being examined.

If I had wanted to enforce any strict rule here, there is much of what Colonel Anderson has read in from Mr. Choate's statement and testi-

mony that is in no wise contradictory of what he has stated here and would therefore have been inadmissible. But I did not raise the objection; I did not propose to raise any objection. It is quite evident that the portions read by Colonel Anderson do give a distorted and an imperfect picture of what Mr. Choate stated upon the subject, and I think that there ought to be no objection raised by the Government to having appear before the Court what Mr. Choate stated fully upon the subject.

Your Honor will recall when Colonel Anderson read in passages from Mr. Choate's statements upon his case, we objected thereto, and I stated then that I should avail myself of the right, upon my case, to read in other portions of Mr. Choate's statement and testimony before these commitees, which portions had a connection to the matter read in by Colonel Anderson. I am prepared to read such portions. I have made notes of the pages wherein they appear. But I thought that in view of the very large number of passages that Colonel Anderson read this morning from this witness's testimony and statement, it would serve the Court's purpose better if the Court had before it this witness's entire statement. I think it is only fair that it should go in and I offer it.

Mr. Anderson: I think it has no relation to the issues in this case, your Honor. I have read from those portions which I thought related directly to Mr. Choate's testimony of yesterday, and so far as I recall every one of them did relate to his testimony of yesterday. I put in other portions of the testimony in the case on direct under the rule of admissions, and your Honor permitted Mr. Kresel to read in other portions of

Mr. Garvan's statement on the same principle—over our objections, of course.

If Mr. Kresel wants to examine Mr. Choate on any of the questions which I read to him or any extracts which I read to him, supplement them by his examination, that comes within the rules of evidence. Otherwise, of course, I will object. But certainly I most earnestly object to putting in this testimony en bloc. I will not say that the whole business relates to foreign matters, but a large part of it relates to foreign matters, and my examination related strictly to the issues in this case and to the points testified by Mr. Choate on direct.

MR. KRESEL: I do not think there will be any difference between Colonel Anderson and myself on the point that Mr. Choate's entire testimony before these committees had reference to the transfer of these patents to the Chemical Foundation and to the importance of the dye industry to the country. Those are the issues in this case, and I do not see where there is any ground for saying that what Mr. Choate stated or testified before these Committees or any part thereof, has no reference to this case. That was the matter that was being investigated by those committees.

MR. ANDERSON: I do not concede that the question of the importance of the dye industry to the United States has anything to do with this case.

MR. KRESEL: Whether you concede it or no.

MR. ANDERSON: It is utterly immaterial, we contend, and cannot be considered by this court.

MR. KRESEL: It is an issue raised by our Answer.

THE COURT: Are you through on both sides?

MR. KRESEL: Yes, your Honor, I am through.

THE COURT: What is the purpose of your offer, Mr. Kresel?

MR. KRESEL: The purpose of my offer, your Honor, is to show that the portions of this witness's testimony read in are distorted—I do not mean that in any offensive way to Colonel Anderson at all—fragments of this witness's whole statement and testimony which, if left without the other portions of his testimony, would be misleading and not helpful to the Court:

THE COURT: The purpose of my question, Mr. Kresel, was to find whether your offer of the evidence of Mr. Choate taken before these several committees is based upon the ground that such testimony shall be here received as if given by Mr. Choate on the witness stand, or whether your purpose in offering it is to have the portions of that testimony admitted fully reflect the views as expressed by Mr. Choate before those several committees, so that his statements there made and views there expressed will be reflected by the full testimony rather than be misunderstood, perhaps, by a portion of the testimony.

MR. KRESEL: Your Honor, the latter is my purpose.

THE COURT: That is said, Colonel Anderson, without knowing anything about the full testimony of Mr. Choate except what has appeared before and what has been read; because I have not had any of those copies in my hand. Whether the attitude of Mr. Choate at that time is fully and completely, fairly and properly reflected by the portions you read I cannot now determine.

MR. ANDERSON: May I make this suggestion. Under your Honor's rules heretofore made in this case, which I simply reserve on——

THE COURT: Yes.

MR. ANDERSON: I would recognize that Mr. Kresel has the right, and probably had the right any how—I mean as a matter of general law—to read other portions of Mr. Choate's testimony and ask Mr. Choate if he did not so testify, to the end that he might make his views complete if he thought they were not complete in the portion read. Mr. Choate, now being on the stand, there is a different question presented, not one of merely reading it into the evidence. The original objection I made was on the ground of admissions. He can ask Mr. Choate if he so testified this or so testified that, specifically, but I earnestly submit that he has not the right to put in the entire testimony without giving me a chance to raise the question whether it is hearsay, whether it is—

THE COURT: That would be true, Colonel Anderson, if he was offering it as primary evidence; but as I understand him, he is not so offering it, and if he were so offering it I should let it go in under the general rule, though I have no hesitation in saying so far as I am concerned it would be useless. The purpose of the portions which you read was necessarily that of reducing the weight or nullifying the value of the testimony given in chief. If you have read portions which will best serve the plaintiff's purpose in that particular, and if the defendant contends those portions cannot be read separate and apart from the whole testimony, then it seems to me there is no difference between you, because you say that Mr. Kresel may read certain other portions and ask him if he so testified. Mr. Kresel says those other portions embrace all the rest of his testimony.

MR. ANDERSON: If your Honor please, I think I have the right to call your attention to the fact

that Mr. Kresel has inadvertently made a mistake. A very large portion of this testimony relates to the dye embargo, tariff rates, a trip to Europe, things of that kind which have nothing whatever to do with the issues in this case as I see them. Of course, I recognize that as to some of them counsel may take a different view. I am objecting to this testimony on the general and specific grounds reserved to all of it, which goes to the materiality and relevancy, but I cannot point out the immateriality and irrelevancy of it unless it is read.

However, I object to the form and the method of putting this evidence in. The only possible way the former testimony can be used except for the purpose of impeaching a witness on cross-examination or as an admission, as I now recall, is to ask the witness if he did not so testify, in redirect. The position of counsel who puts the witness on the stand is that he must get his case from the witness on the stand, and no matter what he has testified to before he must get it from the stand in any case.

THE COURT: There is no doubt about that.

MR. ANDERSON: Therefore, he can ask Mr. Choate, in view of the fact that I have asked him as to his former testimony, if he did not also testify to the following effect. I think that would be fair, and my view of the rules of evidence is that they are rules of fairness and common sense. True, some of them are so mixed up by exceptions that it is like spelling in the English language, you cannot tell just which it should be.

Reserving our general objections on the subject, I do object to dumping into this record hundreds of pages wholesale, as to which I cannot

carry in my mind what it is and I do not know what it is. I have not time to examine it while this witness is on the stand. It may relate to matters I have not seen, because of the thousands of pages in this matter I have not been able to read all and I could not if I would. I am discussing chiefly now, outside of our general objections, a question of the method of putting Mr. Choate's former statements in the record. If the counsel wants to ask Mr. Choate if he so testified, in order to get his testimony accurate, and read it to him, as long as it is relevant to my cross-examination and the issue here I would not on that ground object to it.

THE COURT: Does it not come down to this which is stated by Wigmore on page 199 of the pocket code:

"Where the purpose is to impeach a witness by prior statements of his in writing,"

it does not happen to deal at this page with prior testimony—"the rule for production applies subject to the following qualifications: (a) The writing need not be shown or read to him before asking him as to its contents. (b) But the tenor and circumstances of the supposed statement must be sufficiently specified to him orally in a question, pursuant to Rule 108 (ante §579). (c) If he admits, in replying to such question, that he did make the statement asked about, the writing need not be produced by the impeaching party, unless the trial Court deems it fair to do so."

MR. ANDERSON: I went to the extent of showing him the evidence every time before I asked him the question. I think that is a fair thing to do, because no man can carry all that matter in his mind.

THE COURT: But I think "produce" does not mean merely exhibit it to the witness, does it?

MR. ANDERSON: The rule says that you need

not show it to him in advance. I went to the extent of showing their evidence to both Mr. Garvan and Mr. Choate every time in advance.

THE COURT: I appreciate that. But my interpretation was not the same as yours. I thought Mr. Wigmore meant by production that the writing itself need not be placed in evidence.

MR. KRESEL: May I say, your Honor that what Colonel Anderson is mentioning is just what I am trying to avoid. I am trying to avoid standing up and reading to this witness long passages from his testimony which will take an hour or two, and simply asking him, "Did you so testify?" That is a thing I am trying to avoid.

As for Colonel Anderson not knowing the record, I say now that of course, if your Honor will permit me to put in the statements made by Mr. Choate, he has an absolute right, and I recognize it, to examine Mr. Choate upon any of those statements. It is not going to serve anybody's purpose if I take up these records and stand up for an hour and ask the witness, "You said so and so. Did you say so?"

MR. ANDERSON: If your Honor please, that is exactly the point. I am perfectly willing to save time, but I am not willing to save time by a suspension of the rules of law and evidence. If Counsel want to put in any additional statements of this witness, I must, with an earnest desire to close this case, ask that it be done in a regular and formal and proper way to the end that I may know the testimony he is putting in and relying upon. Hundreds of pages of evidence put in here without having counsel point out what he is relying on or its pertinency to this case, would not be fair to the plaintiff.

THE COURT: The only purpose for which it can be offered is not as primary evidence of the statements therein contained. but to qualify, in so far

as it will do so, the impeaching effect of the portions which you have referred to.

Mr. Anderson: May I say that I regard this as very important and a matter of great consequence in this case. In the first place, may I suggest to your Honor that when you get up in a Court above or even in this Court with a record of this size, it is perfectly impossible to distinguish between evidence which is put in as proof and evidence which is put in for some other purpose than proof. I know of no practice that is more destructive.

We of course are trying the case before a Court, but we consider it as being tried before a jury. Nothing can be more destructive of the rights of litigants than to put in evidence for a limited purpose of this kind and let it all be read. You can not get it out of your mind. The human mind is so constituted that it believes what it sees. When we see a thing in print, we believe it is so. You usually believe what the newspapers say. I do not mean to reflect upon the newspapers in that regard, but we do know that the effect of what we see in a newspaper is much stronger than if somebody told us so.

In my view, the full limit to which counsel can go in this case in connection with the statements read is to read the connection in which those statements are made; and therefore I must earnestly urge that this offer be rejected.

The Court: Colonel Anderson, are you not placing me in this position, although I am not complaining, that there is scarcely a document that was put in by you that was not with equal earnestness opposed by the defendant? In order that this case may be tried this time for the last time, that the issues here raised may be determined by

the Appellate Court or by the Supreme Court on the record here presented, there was no rule of evidence barring the putting in by you of any record, writing or document that you believe you could make use of in a determination of the issues in this case, Are we not both estopped by that?

MR. ANDERSON: I will answer your question in the negative, sir. There are any number of documents that Mr. Kresel might desire to put in here as to which I think your Honor's ruling might apply. There might be a limit. I do not know whether you could put in a discussion of Einstein's astronomical theory here. I think the Court would impose some limit.

But here is a matter of form in the putting in of evidence. Your Honor has ruled a number of times on the form or presentation of evidence. For instance, suppose when Mr. Metz was on the stand, after he was cross-examined, without showing him the evidence, I had gotten up here and offered these three books in which he testified to these thousands of pages of stuff. I assume that your Honor would rule, of course that the witness while on the witness stand must have his attention called to his former testimony. You can bring out any of his former evidence that has relation to the questions asked him, but you can not admit into this record the evidence given in hearings before committees, even to show that he made a more complete statement, without pointing out that it relates to something asked on cross-examination.

While your Honor has opened the door wide, there are certain rules under which the evidence must be put in, even if the doors are wide open. I object to the method by which counsel proposes to put this evidence in.

THE COURT: I will sustain your objection to that and you may take such time as you need, Mr. Kresel.

THE WITNESS: If your Honor please may I make a suggeston? Is there not a stipulation that the witnesses will be deemed to have testified as set forth in those volumes?

MR. ANDERSON: The stipulation, as I recall it, is to this effect: that any of these documents containing this evidence may be used without formal proof that the evidence was so taken. In other words, ordinarily, we would have to call the stenographer to prove that the witnesses so testified at such a time. We waived the formality of that proof, just as we waived formality in the proof of a letter. But it was not to be put in evidence as if it were testimony given on a former occasion, as proof of facts contained therein.

MR. KRESEL: That was my understanding, as Colonel Anderson states. I do not believe it was intended to bind either party to a situation where the other might put in testimony without any further proof.

MR. ANDERSON: If we had, we would not have called these witnesses at all.

THE COURT: All I am restricting you now to, Mr. Kresel, is to proving such portions as you deem relevant for the purpose of negativing or modifying the impeaching effect, if any, upon the testimony of this witness as the result of the portions of the testimony of Mr. Choate before the Committee, read by Mr. Anderson.

RE-DIRECT EXAMINATION.

By MR. KRESEL:

RDQ. 87. Mr. Choate, will you now take up this volume containing the minutes of the hearing of the

Committee of Ways and Means and turn to page 88 thereof?

A. Yes, sir.

MR. KRESEL: Colonel Anderson read a portion of the second paragraph on that page ending with the words "Judge Covington." I desire to offer in evidence now the balance of that paragraph together with the statement following that paragraph on page 88, page 89 and page 90, to the end of the first paragraph on that page.

THE COURT: Now then, in order that I may understand, is there any question that the witness so testified, or do you want to ask him a specific question?

RDQ. 88. Did you so testify as is reported there?

A. I did.

THE COURT: Is it your purpose that the stenographer shall take those books and copy them at large?

MR. KRESEL: No, your Honor; I simply want the record to give the pages and I will identify them sufficiently so that there will be no difficulty.

THE COURT: Then are you offering that as a separate exhibit to be numbered? If so, the Clerk had better give it a number. It must either be copied at length by the stenographer or be given a number by the clerk. The clerk suggests that all the portions which you indicate may be given one exhibit number.

MR. KRESEL: All the portions in one book be given one number?

THE COURT: Yes.

MR. KRESEL: I think that is a very good suggestion.

RDQ. 89. Now, Mr. Choate, please turn to page 92, beginning with the question by Mr. Moore which reads as follows: "Mr. Moore. In papers left in New

York, Washington and elsewhere?" down to and including the paragraph on page 94 which reads as follows: "Mr. Choate, They are not able to do any more importing than they could possibly help, because of its effect upon foreign exchange and the value of the pound and franc."

MR. ANDERSON: Now, if your Honor please, I wish to note an additional objection, in order to preserve the record. First, I move to strike out the matter introduced from pages 88 to 90, for the reason that it has no relation whatever to the subject covered by the portion which I introduced. To make my point clear, I was merely showing Mr. Choate's connection. In the next question he goes on to discuss the conditions of the dye industry in the United States, and there certainly can be no relation between those two things.

Second, I object on the ground that a very large proportion of his statement is obviously hearsay. He quotes various people with whom he has talked, and therefore he could not testify to that on the stand and it can not be read in evidence. For those reasons, I move to strike out that portion introduced on pages 88 to 90 inclusive.

Now, on pages 92 to 94 inclusive, the matter read has absolutely no relation to the subject matter which I introduced on the part of Mr. Choate, but is entirely new matter and original matter presented by counsel himself, and not explanatory of or connected in any way with the evidence which I introduced.

I recognize the difficulty of ruling on evidence this way; but I have to preserve the record. I therefore object to each question and each answer so read and move to strike the same out.

THE COURT: If your objection is well taken,

then the evidence so admitted is wholly without value. That is as far as I can go.

MR. ANDERSON: I understand. I merely want to preserve the record and note the objection and exception.

THE COURT: Because any testimony given by Mr. Choate before the committees, for other purposes than that of refreshing his recollection, or possibly some other purposes which I do not now think of, must be given from this witness stand and not put in indirectly that way. It is only for the purpose of having the portions of the testimony given before the committee in this way properly reflected here that it is admitted at all.

MR. KRESEL: May I proceed, your Honor?

THE COURT: Yes.

RDQ. 90. On page 95 of this book, Mr. Choate, I direct your attention, without reading it to you, to the statement made by you beginning with the paragraph reading as follows: "THE CHAIRMAN: Now, Mr. Choate, if you will proceed." And going from there to the bottom of page 97 of this volume. Did you make the statement therein contained before the committee at that time?

MR. ANDERSON: Same objection and motion.

A. I did.

RDQ. 91. I now turn to page 108 and page 109, from which Colonel Anderson read portions, and I direct your attention to page 109 beginning with the paragraph as follows: "Mr. Moore. It is stated in this very interesting publication of the Chemical Foundation (Inc.), which is evidently intended for this committee, that 4,500 of these patents which applied to chemistry Mr. Palmer has sold for the benefit of American industries to a quasi-trustee corporation, called the Chemical Foundation." From that point on to the end of the first paragraph on page 111, which ends

with the sentence "Where could we find them?" Did you so testify as reported at the pages to which I have called your attention?

MR. ANDERSON: I make the same objection as that made to the preceding question, and to all this evidence, as already stated, the objection applying to so much thereof as was not read by me on the cross-examination, because it includes a part of what I read, or to so much thereof as is not directly related to the subjects discussed in the portion which I read on cross-examination.

A. I did.

RDQ. 92. I also direct your attention to the statement at page 111, bottom of the page, beginning with a statement reading as follows: "Mr. Choate. At all events, there was a board I think we all respected and who had the confidence of the community and certainly knew the Germans and their works." Going from that point to the last but one paragraph at the bottom of page 112, which reads as follows: "Mr. Choate. Under our charter we can not license any corporation three-quarters of whose stock is not held by American citizens. I think that is a very wise provision. We do not want ever again to get in a position of having our industries controlled by foreign corporations." Did you make the statement as appears at the pages that I have just indicated?

MR. ANDERSON: Same objections as stated above, which will be considered as made in each case without being repeated, and subject to the limitations therein stated.

A. I did.

MR. KRESEL: I am sorry to take all this time, your Honor, but I can not avoid it.

THE COURT: Are you through with that volume?

MR. KRESEL: I am through with this one volume.

THE COURT: Then let it be marked as an exhibit.

MR. KRESEL: In other words, the passages that I have indicated will receive one number.

THE COURT: Yes.

Received in evidence and marked "Defendant's Exhibit 141," being passages indicated from volume entitled "Hearings before the Committee on Ways and Means on H. R. 2706." (*See Exhibits, Vol. V, page 2743.*)

RDQ. 93. I read from page 92 of the hearings before the Committee on Finance on H. R. 8078. Will you please turn to that, Mr. Choate? Question by Senator Watson:

"Senator Watson. And who is president of the Chemical Foundation?

"Mr. Wigglesworth. Mr. Garvan was, I understand, president.

"Senator Watson. And who is Mr. Garvan?

"Mr. Wigglesworth. The Alien Property Custodian.

"Senator Watson. So that he is the Alien Property Custodian and at the same time he is president of the Chemical Foundation.

"Mr. Choate. But he is not the Alien Property Custodian who sold the patents.

"Senator Watson. I understand that.

"Mr. Choate. His predecessor sold the patents."

Did you give that testimony?

MR. ANDERSON: That is the testimony of Mr. Wigglesworth, if your Honor please. There is no testimony there by Mr. Choate; not a word.

MR. KRESEL: Mr. Choate made the statement.

MR. ANDERSON: But the preceding statement, questions by Senator Watson and replies by Mr.

Wigglesworth. Certainly we can not read Mr. Wigglesworth's evidence in this case.

MR. KRESEL: I did not ask him about Mr. Wigglesworth. I asked him if he so testified. I read the Wigglesworth portion because otherwise it would not be understood at all; simply for introductory purposes.

MR. ANDERSON: Let us get that clear. Mr. Wigglesworth was on the stand; Mr. Choate sitting by as counsel for either the Chemical Foundation or the Dyes Institute, I think he testified there, put the statement in the form of a question to Mr. Wigglesworth or to Senator Watson, and then makes a statement himself in Mr. Wigglesworth's testimony.

THE COURT: Where did you begin reading, Mr. Kresel?

MR. KRESEL: I began reading with the question by Senator Watson reading as follows: "And who is president of the Chemical Foundation?" Mr. Wigglesworth answers: "Mr. Garvan was, I understand, President." "Senator Watson. And who is Mr. Garvan?" "Mr. Wigglesworth. The Alien Property Custodian."

MR. ANDERSON: How can that go into the record?

MR. KRESEL: Simply as introductory to the statement made by Mr. Choate.

MR. ANDERSON: I object to Mr. Wigglesworth's testimony going into the recod, sir, without calling Mr. Wigglesworth.

MR. KRESEL: All right, I will omit those two answers by Mr. Wiggesworth. I read the question by Senator Watson:

"Senator Watson. So that he is the Alien Property Custodian and at the same time he is president of the Chemical Foundation."

I assume you will concede that Senator Watson was talking there about Mr. Garvan?

MR. ANDERSON: I will.

MR. KRESEL: All right.

"Mr. Choate. But he is not the Alien Property Custodian who sold the patents?

"Senator Watson. I understand that.

"Mr. Choate. His predecessor sold the patents.

"Senator Watson. But he is the Alien Property Custodian at this time?"

Those are the three or four paragraphs that I am now asking the witness as to whether he made the statement on those occasions as read.

THE COURT: The statements there credited to him?

MR. KRESEL: To him.

MR. ANDERSON: In addition to the objections already raised, I object on the ground that the record discloses that Mr. Wigglesworth was under examination. The record discloses that Mr. Choate was there as Counsel for the American Dyes Institute.

THE COURT: May I ask: Is this the case where Mr. Choate was stating facts and not testifying to facts?

MR. ANDERSON: This is the case where he asked Senator Watson——

THE COURT: No; I gathered the impression from your remarks and some statements that have gone before in the trial of this case that before one of these committees Mr. Choate was not on the stand but did make certain statements to the committee not under oath. I was wondering whether this was the one or not.

THE WITNESS: Did your Honor ask me to answer that?

THE COURT: Yes.

THE WITNESS: If your Honor please, none of the testimony in any of these hearings except that before the committee referred to here as hearings before the sub-committee of the Committee on the Judiciary of the United States Senate, in 1922, were under oath. The testimony before the Congressional committees is not, as a rule, taken under oath. So that all my statements made to the Senate Finance Committee and the House Ways and Means Committee were on a par. None of them were under oath, and in many cases questions were asked of me casually in the midst of the examination of other witnesses, and were then answered.

MR. ANDERSON: Then I object on the further ground that the witness is undertaking to testify as to when the patents were sold and by whom, when that is a question of law to be drawn from the facts and not testified; and on the further ground that it has no relation to the cross-examination.

THE COURT: My views have been stated. I will not repeat them. It will be admitted under our general rule.

RDQ. 94. I direct your attention, Mr. Choate, to page 94 of this volume of hearings before the Committee on Finance on H. R. 8078, beginning with the paragraph which reads as follows: "In the first place, the dye industry makes a greater number of different products, I suppose, than any other industry in the world." That is as much of that paragraph as I shall read, to and including the end of the first paragraph on page 102 thereof; and I ask you whether you made the statements that are set forth on the pages that I have indicated.

MR. ANDERSON: If your Honor please, this

statement is simply a re-statement of some of the things contained in the Palmer report about the conditions in the dye industry prior to the war, about which I did not ask the witness a single question. It is not explanatory of them. It contains no limitations upon them. It has no connection with anything that I have asked him about. It contains in it an article by Mr. Burr from the quarterly review of July, 1919 on the German business in the United States, and the last two pages of it are a statement by Mr. John P. Wood, or a considerable part thereof, of the American Association of Woolen and Worsted Manufacturers.

If that can go into the record under the idea of explaining or enlarging or completing what I read, when it has no more connection with it than the history of the Peloponnesian War, is going pretty far, and I want to object very earnestly on all the grounds stated and those now stated to putting that into the record.

THE COURT: Mr. Kresel, what in your view is the relation of the matter now offered to that read from Mr. Choate's statements by Colonel Anderson on cross-examination?

MR. KRESEL: Your Honor will recall that a number of the statements read from Mr. Choate's testimony and statements by Colonel Anderson, referred to the question of price. You remember he read the statement about the price being a guess, and so on.

THE COURT: Yes, I recall that.

MR. KRESEL: Now on the pages that I have indicated, Mr. Choate sets forth a statement of the different colors that were manufactured. He sets forth the nature of the various dyes and gives an account of the difficulty in producing them.

THE COURT: The purpose being to show that the use of the word "guess" was not in its ordinary significance, but as indicating that——

MR. KRESEL: There was no direct way of arriving at the value.

THE COURT: —that an estimate of value of patents can not be as accurate as one on tangible property; is that the purpose?

MR. KRESEL: Yes, your Honor: And then may I further point out that in these extracts that I am now offering Mr. Choate is showing the large extent of the business of the Badische Company and the Bayer Company in Germany, which, of course, has a direct bearing upon the question of value, inasmuch as Mr. Choate pointed out that any industry which would be built up here would have to be in direct competition with the German industry abroad.

THE COURT: You have indicated you differ.

MR. ANDERSON: I differ entirely, sir; but I also want to call attention, in addition, to page 101, which is included, where the following appears:

"Mr. Wood. Mr. Chairman, in order that it may come in at the appropriate place in the record, may I make a statement about this condition of affairs that I think will be very important to the committee as bearing directly on this subject you are considering?

"Mr. Choate. If it will not take too long.

"Mr. Wood. It will only be momentary.

"Mr. Choate. All right.

"Senator Watson. Please state your name?

"Mr. Wood. John P. Wood, of Philadelphia; woolen manufacturer. I represent this committee of the American Association of Woolen and Worsted Manufacturers. For some 30 years" and so forth. Mr. Wood goes on to make a statement.

MR. KRESEL: If your Honor please, it is so set forth in the statement here that it was not easily distinguishable that Mr. Wood interrupted here; but it is only one paragraph and I am perfectly willing to have it cut out.

MR. ANDERSON: Then he goes on to say that what Mr. Choate said is true; so we are backing it up with somebody else's statement.

MR. KRESEL: Mr. Choate resumes his statement.

THE COURT: We are not going to discuss it. I am going to admit it under the general rule for the purposes as indicated at the beginning of the re-direct examination of Mr. Choate.

MR. KRESEL: The portion beginning with the second paragraph on page 101, reading: "Mr. Wood. Mr. Chairman, in order that it may come in at the appropriate place in the record," etc., down to the paragraph on that page ending with the words "as it did the foreign business" are not to be considered as a portion of what I have offered.

THE COURT: All the objections stated with respect to this and preceding statements of Mr. Choate before the committees are noted here and the questions are taken under the general rule.

THE WITNESS: Have I answered the question?

RDQ. 95. I am asking you Mr. Choate, whether you made the statement as appears on those pages?

A. I did.

RDQ. 96. I now direct your attention to page 113 of this record, beginning with the paragraph which was read in by Colonel Anderson, reading as follows:

> "We came to the conclusion that the patents could not have been held idle like that for any purpose, except to prevent, on the one hand, American manufacture and, on the other, imports from possible competitors abroad."

And going from there to page 117, ending with the paragraph the last sentence of which reads as follows:

> "And the charter provides that except for a six per cent. return on the preferred stock—which is to be retired as fast as it can be—and a dividend limited to six per cent. on the common stock if earned, the entire funds produced by the Chemical Foundation must be used for purposes of the advancement of science and industry in the United States."

And I ask you whether you testified as is reported on those pages?

MR. ANDERSON: Objected to for the reasons already stated, except so much thereof as was read on cross-examination, which includes a part of what I read.

THE COURT: The same ruling.

RDQ. 96. (continued) You may answer.

A. I did.

RDQ. 97. I direct your attention to page 124 of this record. Colonel Anderson read in beginning with the first question on that page down to and including the second question and answer thereof. I now ask whether you gave this testimony and I read the immediately succeeding question and answer, succeeding that which Colonel Anderson read in, to wit:

By Senator Watson:

> "Do you contend it is necessary that your institution should survive in order to perpetuate the dye industry in this country?
>
> "Mr. Choate. I do not. But I do imagine it is a very valuable institution, for this reason, among others. If it is desirable that the vat dyes shall be manufactured in this country, for instance —I mean the whole group of patented dyes—the Chemical Foundation can render some assistance in that line, because by demanding the payment of royalty on foreign goods, or if necessary seeking to enjoin their sale, it can to some extent af-

ford protection. That will eventually be possible after the patents are adjudicated, if they are any good. But unless the patents are protected, are fought, litigated and enforced they are absolutely worthless to anybody. The owner has got to protect them, and for that purpose must have and spend money."

Did you make that statement?

A. I did.

THE COURT: This is all subject to your objection and exception, Colonel Anderson.

Extracts from Hearings before the Committee on Finance of the United State Senate received in evidence and marked "Defendant's Exhibit No. 142." (*See Exhibits, Vol. V, page 2764.*)

RDQ. 98. Colonel Anderson read to you from page 528 of the hearings before the sub-committee on the Judiciary, with reference to your trip to Paris as representative of the American Dyes Institute. Was that the capacity in which you went?

A. It was.

RDQ. 99. You say, "The information which the legislative committee had received was included in a report made by Mr. Edward S. Chapin, the Paris representative of the Textile Alliance, to the Advisory Committee of the Department of State. This report was printed and bears date September 29, 1920, and I offer this copy of the printed copy of the report for the consideration of the Committee."

"The Chairman. It will be received and marked as an exhibit."

Then the next sentence reads as follows:

"The report referred to was marked 'Choate Exhibit No. 2, not copied'."

Have you a copy of that report available?

A. I haven't it here. I think I probably have it

in the office. If not, I can doubtless secure a copy for you.

MR. KRESEL: At this time, if your Honor please, I offer in evidence a copy of that report. I haven't it here. I should like to reserve the privilege of producing it as soon as I can get it.

THE COURT: The report is what?

MR. KRESEL: It was a report made by Mr. Chapin, the Paris representative of the Textile Alliance to the Advisory Committee of the Department of State.

RDQ. 100. It was with reference to these reparation dyes, was it?

A. Yes.

MR. KRESEL: As to which Mr. Choate made this trip to Paris about which he was questioned by Colonel Anderson.

THE COURT: How is that relevant, Mr. Kresel? I do not follow you.

MR. KRESEL: If Mr. Choate's trip to Paris on this matter is at all relevant, then the report embracing the results of the trip is material.

THE WITNESS: Mr. Kresel, I think you are mistaken in your understanding of this situation.

RDQ. 101. If I am, I wish you would correct me.

A. The Chapin report was a report to the Advisory Committee of the State Department, which stated the conditions that existed in regard to the treatment by the Reparation Commission of the dye question. That report was what alarmed the Dyes Institute in regard to the situation and led them to ask me to go.

MR. KRESEL: Now, there you are. Apparently Colonel Anderson puts some importance on the fact that Mr. Choate made this trip to Paris for the American Dyes Institute. I want to have before the Court the situation that called forth the

request that Mr. Choate make this trip. If one is material, the other certainly is material.

MR. ANDERSON: Under the ruling of the Court, under which we are now proceeding, I can see the relevancy, although I do not concede it and I raise my objection to it, of the paragraph read, from the standpoint of Mr. Kresel. I would be perfectly willing to admit that Mr. Choate went——

MR. KRESEL: You read it in, Colonel.

MR. ANDERSON: I am talking of the paragraph you read. Went over to Paris as representative of the American Dyes Institute in connection with the reparation dyes. But now the question is on the offering of a report by Mr. Chapin of the Textile Alliance on the conditions in Paris and the paper is not even here. I would waive that if it had any standing as evidence and reserve the right to examine it later when presented and offer additional evidence. If we are going into a history of the operation of the Textile Alliance in Paris, we will go into it fully, but Mr. Chapin's report as a representative of the Textile Alliance is certainly not evidence.

THE COURT: Was Mr. Chapin a representative of the Textile Alliance?

MR. KRESEL: Paris representative of the Textile Alliance and the report was made to the Advisory Committee of the Department of State.

THE COURT: I do not see that Mr. Choate's trip to Paris has any relevancy and it seems to me this has even less.

MR. ANDERSON: I might say that my reason for introducing this statement was—and there is no mystery about it—to show the connection between these two corporations and the activities of those corporations. I regarded it as one of the various incidents in that connection, without imply-

ing the slightest suggestion or criticism of Mr. Choate as a lawyer or personally. These various things I pointed out show that connection. What its legal effect is will be a question for argument afterwards.

I am not raising any question that Mr. Choate did not have a perfect right to go to Paris, that he was performing service in going to Paris and that he had a right to serve the Dyes Institute as counsel. I am not raising any question like that. Nor am I raising any question in connection with his trip to Paris. There is a whole lot more about his trip to Paris, telegrams and correspondence that I did not put in. I expressly did not go into his trip to Paris. How he can put in a report by Mr. Chapin of the Textile Alliance is beyond my comprehension.

MR. KRESEL: Your Honor has already indicated your view as to the materiality of Mr. Choate's trip; and of course, if that is your Honor's view, I do not think I shall insist upon putting in the report.

THE COURT: You understand, Mr. Kresel, that is my immediate reaction. If Colonel Anderson can at the argument or at any time prior to decision establish that that is a link of importance in showing the conspiracy, it will be given that value regardless of any statement just made by me. I understand you do not press your offer of Mr. Chapin's report.

MR. KRESEL: I do not, your Honor.

If your Honor please, I am going to ask the Court to let me mark for identification the statements made by Mr. Choate beginning with the paragraph on page 528 of this book containing the Hearings before the Committee on the Judiciary of the Senate which reads, "In September,

1919, the Legislative Committee of the American Dyes Institute communicated with me and stated that they were alarmed by reports" and so on, to and including the paragraph on page 548:

By the Chairman:

"It is only fair to add that the statements made by Senator King were upon information."

The matter just offered for identification contains the statements made by Mr. Choate and the entire line of correspondence with reference to this Paris trip. It may well be that before the close of this case I may renew my offer to have that portion of Mr. Choate's statement and the correspondence that accompanies it put in evidence. All I want to ask the witness now is whether he made the statements on the pages indicated and whether the correspondence which is there printed is correct.

THE WITNESS: I did make the statements and the copies are to the best of my knowledge and belief correct and complete.

Let it be so marked.

Marked Defendant's Exhibit P for Identification, 7/6/23.

MR. ANDERSON: Since I do not know whether counsel is going to introduce it in evidence, of course, I reserve all rights as to that.

THE COURT: You may make the objection at the time it is offered.

MR. KRESEL: That is all.

RE-CROSS-EXAMINATION.

MR. ANDERSON: There is one statement I could not find when I was reading from the testimony, which has been brought to my attention by

counsel's reading of the page, that I would like to ask Mr. Choate about and put in evidence.

I will read a portion of the statement from the Hearings before the Finance Committee on H. R. 8078, beginning at the bottom of page 122.

Question by Senator Watson:

"Are you one of these gentlemen?

"Mr. Choate. I am not a director, but I am of counsel, and I think nothing has yet been done, and nothing will be done that is not concurred in by me."

By MR. ANDERSON:

RXQ. 102. You were referring there to the Chemical Foundation, I think it will be conceded?

A. Yes.

MR. ANDERSON (Reading):

"Senator Watson. I am not questioning anybody's motives, but looking at it as an outsider, if you thought somebody was coming in to manufacture a particular kind of dye would produce an excess of that particular product in the country, you would shut him out?

"Mr. Choate. I, personally, would not, and I think the decision of the Foundation will be that under no circumstances will any license be refused except when the applicant turns out not to be really un-American, or when he is not qualified to make the product in question.

"Senator Watson. I understood you to say a while ago that if there should be an excess of any one particular product there might be power used to prevent that by your Chemical Foundation.

"Mr. Choate. What I said was that under the charter of the Foundation the directors would have the power to refuse a license to additional applicants under those conditions. We have placed that question before the assembled stockholders who represent 140 leading concerns in the dye industry and in the textile and other industries, and I understand the almost unanimous opinion of

those industries to be that the issuance of licenses ought never to be limited in that manner.

"Senator Watson. No; but the power remains.

"Mr. Choate. The power remains; we could do all sorts of things if we were rascals.

"Senator Watson. That is not the question. Has the Chemical Foundation as such assumed any authority over imports; that is to say, if imports are to come into the country, have they taken any steps to get control of those imports coming into the country in any way?

"Mr. Choate. No; we can not. None of these patents that cover the dyes have been adjudicated, and until a patent has been adjudicated you can not get an injunction.

"Senator Watson. Has any effort been made on the part of anybody connected with the Chemical Foundation to enter into any sort of arrangement so that they can control imports or so that imports come into the hands of men who control on this side?

"Mr. Choate. No, sir. Royalties will be charged against the importer precisely as they will be charged against an American manufacturer in order to provide funds for the purpose for which the Foundation was organized, which are public and altruistic, purely and simply."

My purpose in introducing that was for the earlier part of it, but in order to make the statement complete I have read it all. I think that it all refers to that subject.

THE COURT: Do you want to ask the witness about that?

RXQ. 103. Is that your testimony given at the hearings of this committee held December, 1919 and January, 1920?

A. I gave the testimony which you have read.

MR. KRESEL: In that same connection I offer in evidence the following, which appears at page

122. I begin at the top of the page; but in order to make it intelligible I will have to read the question and answer at the bottom of page 121:

"Senator Watson. But it makes impossible, does it not, the entrance of a new man into the dye business without getting a license from that company?

"Mr. Choate. By no means.

"Senator Watson. On account of the fellows who are in and having the license shutting him out?

"Mr. Choate. Certainly not. The only things patented it has which affect the dye industry are the vat-dye patents.

"Senator Watson. Are these patents all vat-dye patents?

"Mr. Choate. Oh, no. But the only patents that have any material effect on the dye industry are the vat dye patents.

"Senator Watson. Do you say this corporation reserves to itself the right to acquire patents in the future; that is, patents taken out in this country?

"Mr. Choate. It could do it; but it is not the intention of anybody to do it, except to stimulate chemical invention; to offer some kind of a reward to employees in the public institutions who make inventions and who can not benefit thereby, and, on the other hand, by rendering those inventions useful by backing up the inventor.

"Senator Watson. What do you mean by 'backing up the inventor?'

"Mr. Choate. By buying his invention from him, developing it, and protecting it.

"Senator Watson. By buying the patent, and then nobody would be able to manufacture under the terms of that patent except somebody that gets a license from the Chemical Foundation?

"Mr. Choate. Yes. But anybody, practically speaking, can get a license.

Senator Watson. That depends on the will of the trustees, does it not?

"Mr. Choate. I think not.

"Senator Sutherland. Do you grant several patents (licenses) to one party?"

I think that it should read "licenses" under several patents. May the correction be made?

THE WITNESS: I think he probably meant licenses under several patents.

MR. ANDERSON: I think that is probably what he meant.

MR. KRESEL: Then I am going to insert "licenses under" so it will read, "Do you grant licenses under several patents to one party?"

MR. ANDERSON: I am willing to agree that that is probably what he meant.

MR. KRESEL: All right, then, I will strike out the correction. (Continuing reading)

"Mr. Choate. Yes. We have granted several licenses under one of the product patents.

"Senator Curtis. No one can get an exclusive license from you?

"Mr. Choate. He can not.

"Senator Nugent. And no monopoly can be built up?

"Mr. Choate. No monoply could be built up, unless the Foundation was managed by criminals. If they ever get us out and get criminals in it might happen.

"Senator Nugent. And if a man desires to go into the dye manufacturing business all that is required of him is to procure a license?

"Mr. Choate. Whether he is an outsider or an insider he gets a license just the same. We have practically put up now to the stockholders of the Foundation the question of whether it will ever be advisable to limit the number of licenses, in case we find the number has become so great that the market for any patented product is in danger of being completely flooded. In certain cases that question might arise, also, in cases like arsphenamine, where the product is dangerous if made under bad conditions. Their deliberate de-

cision seems to be that no limitation is preferable and that everybody must receive a license."

Did you so testify?

THE WITNESS: I did.

MR. ANDERSON: In order to make the record clear, I will ask if it is understood that my objections to the reading in of the testimony of Mr. Choate, as already indicated by the defendant, apply to the exhibit as well as to the answer of the witness. I wanted to make that very clear.

THE COURT: Yes. Have you had a number assigned to your last extract?

MR. KRESEL: To what I have just read, your Honor?

THE COURT: Yes.

MR. KRESEL: I do not think it is necessary. I have read it into the record.

THE COURT: But you read from three books.

MR. KRESEL: Yes, the third one was only for identification, and that was so marked.

THE COURT: And the remaining portions of it that you are interested in were read in?

MR. KRESEL: Yes, sir. Is that all for Mr. Choate?

MR. ANDERSON: Yes, that is all.

THE WITNESS: One second. There is one passage here which I think was incomplete. (Indicates to Mr. Kresel.)

MR. KRESEL: I did overlook that, your Honor.

Colonel Anderson read in from page 518 of the Hearings before the Committee on Finance, Tariff Act of 1921. I desire to read in three or four questions preceding the portion that Colonel Anderson read in. It is the first question on page 518 of this book:

"Senator McLean. Is this Mr. Garvan related to the Garvan that was subsequently Alien Property Custodian?

"Mr. Choate. It is the same Mr. Garvan. I shall ask leave of the committee hereafter to state the circumstances under which he became president of the Chemical Foundation.

"Senator LaFollette. How long after this transaction—I refer, now, to the purchase of these patents from the Alien Property Custodian in whose office he was then established and a part of your organization—how long after that did he become Alien Property Custodian?

"Mr. Choate. March 4, 1919, when Mr. Palmer was appointed Attorney General.

"Senator LaFollette. How long was that, if you please? Do you have the other date in your mind?

"Mr. Choate. Approximately seven weeks."

THE COURT: Do you want to make an inquiry of the witness about that?

MR. KRESEL: Did you so testify, Mr. Choate?

THE WITNESS: I did so testify. I may say there is an obvious error there, that the period seven weeks is more than actually elapsed. The period was four or five weeks.

THE COURT: All of the objections heretofore made are considered as made to this evidence.

MR. ANDERSON: Yes. I did not make them, but I considered they would be applied to this evidence and the answer thereto.

THE WITNESS: Am I excused now? I believe I am still under subpoena of the Government.

MR. ANDERSON: So far as I am concerned you might have been excused some time ago. I thought you had understood you were released some time ago.

THE COURT: Are you through with Mr. Choate —both sides?

MR. KRESEL: Yes, your Honor.

THE COURT: Then you are discharged from the subpoena.

(Witness excused.)

MR. KRESEL: Your Honor will recall that upon the examination of Mr. Garvan I sought to offer in evidence proof of certain sales of patents made by the Alien Property Custodian to the Government, and the objection was made that we did not have the assignments here. I have since obtained certified copies of the assignments or bills of sale of these patents to the Government, and I now offer an instrument of assignment from the Alien Property Custodian to United States of America, represented by the Secretary of the Navy, dated the 6th day of February, 1919, recorded in the Patent Office on the 10th day of April, 1919, and after it is marked I will state to your Honor briefly what the instrument is.

THE COURT: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 143." (*See Exhibits, Vol. V, page 2786.*)

MR. KRESEL: By that instrument, your Honor, the Alien Property Custodian conveyed to the United States Government as represented by the Secretary of the Navy, seventy-two patents and twelve agreements relating to patents, all embracing what are known as the wireless patents, covering the wireless stations that were taken over by the Government—all those seventy-two patents and twelve agreements for $500.

MR. ANDERSON: Of course, this evidence is being taken subject to the general objections.

THE COURT: This is an assignment or license?

MR. KRESEL: This is an assignment.

THE COURT: Of the patents?

MR. KRESEL: Yes, sir.

THE COURT: By private sale?

MR. KRESEL: By the Alien Property Custodian. You see, your Honor, under the act sales to the Government did not have to be even under Executive order, they could be made direct. Your Honor will recall the statute says sales except to the United States shall be made at public auction, or, if the President directs, at private sale. So these sales, your Honor, were just made without anything further being done—of course, not at public auction and even without an Executive order. May I read the conveyance part?

MR. ANDERSON: To get the record straight, I note the general and specific objections already made to this evidence, and point out that aside from the question of authority, which is a question of law, this matter does not relate in any way to the Chemical Foundation or the sale to the Chemical Foundation, and has no connection therewith.

MR. KRESEL: I will read this briefly. (Reads from Exhibit 143 of Defendant.)

The list which is attached, your Honor, contains, as I have stated, a list of seventy-two patents and a large number of these contracts which cover the patents.

THE COURT: Won't you tell me what the purpose of the offer is? I am afraid I am missing it.

MR. KRESEL: Your Honor, the purpose of the offer is to show that at practically the same time that the sale which is here being attacked by the Government as having been made for an inadequate consideration was consummated, the Government was taking over from the Alien Property Custodian properties which are described in this instrument at the valuation that is there described. It is in line, your Honor, with the testimony of Mr. Palmer and Mr. Garvan that these

transfers made to the Chemical Foundation were made under the direction of the President pursuant to a public policy, pursuant to the purposes which the President had in mind, thereby to place these patents in a position where, instead of being a hindrance to the Government, they would be a help to the Government. It is in line with our argument, as we shall contend when we come to argue this case, that the question of consideration, the money consideration here, is of minor importance.

MR. ANDERSON: May I just say a word in reply to that, to enlarge my objection?

THE COURT: Yes, but I would like to ask Mr. Kresel one further question.

MR. KRESEL: Certainly.

THE COURT: Then you may have an opportunity to reply to all that is said, Colonel Anderson. How do I know but what five hundred dollars was the full value of all those patents? I mean was the full commercial value for that assignment.

MR. KRESEL: Well, of course up to the present there is no evidence as to that.

MR. ANDERSON: I simply want to say that, of course, it is conceded that this has nothing to do with the Chemical Foundation. It took place on February 6th when the President was in Paris. Let us suppose that the Alien Property Custodian and the officer of the Navy with whom he dealt in this matter did undertake to establish a policy, to take over alien property for a nominal consideration, for the Government of the United States. Let us suppose that they did do it, the Alien Property Custodian with the best of motive made the conveyance seeking to serve the interests of the country, that the Navy officer who took the

conveyance believed he was serving the interests of the country. We have yet to be referred to any act or any authority of the Alien Property Custodian to confiscate property for the benefit of the United States.

I doubt if any act in the history of the United States appealed more to the people, perhaps, than the taking of Arlington. Is there an instance of a single public service corporation case that goes to the United States Supreme Court, when it can not be demonstrated in the opinion of the public officers who fix a rate below a fair return upon property, that such rate is in the public interest? Has anybody ever questioned in the Courts of the United States the fact that it matters not how great the public interest is or how vital the public interest is, the United States has never adopted the principle that necessity knows no law. I hope it never will. If it does, then the spirit of the invasion of Belgium won this war.

Let us suppose that the United States needed these wireless patents or chemical patents, or any others, that its industry needed them for development. What argument is that that necessity justifies confiscation? That is all it is. And the courts of this country have never listened to that argument for a minute, except in a few isolated cases in the Civil War, which stand upon a peculiar footing of rebellion.

The title of the Government of the United States to these patents and rights, so far as the Germans are concerned, can not be questioned. That question has been settled in a treaty which was dictated by the sword. But as between the officers of the United States, its citizens and its Government, I am standing here in the humble capacity representing the Government of the United

States to say that this Government is too great to claim that its necessities, whatever they may be in war or in peace, permit the violation of the fundamental laws of this country and the principles of justice as between itself and those who have sought its protection and relied upon its protection.

And I quote the President of the United States on that question in every speech he made from the very day we broke relations with Germany down to the day he returned from Paris and was taken ill later. If the Constitution of the United States puts in Congress by express terms the power to legislate for the public welfare and the national defense, even the power of Congress is subject to the limitations of the Constitution, and, as the Supreme Court has so often said, while it may have the technical power to confiscate alien property seized on land, it has always stood against the exercise of that power which for two hundred years no civilized nation has dared to exercise in the face of public opinion, and which this Supreme Court declared in Brown against the United States and in Ware against Hilton was not recognized by international law as a custom today, and that this country adopted international law in its most approved and advanced form.

The idea of standing in a court of the United States and citing as an authority for the sale of property without consideration, in view of the decisions of the courts of this country and of the Supreme Court of the United States, the fact that the officers of the Government themselves took property without consideration. If they did such a thing, it was an absolutely invalid act, so far as their acts were concerned. Whether as between

this Government and the Germans the German can raise it is not material to this issue. But as to anybody that could raise it, if they could, I hope the courts of this country will never be closed to their rights to come into them, and I know they never will be, to question an act of that kind, which has not the slightest element of justice and has for its foundation every principle that Germany asserted in its effort to overthrow the civilization of the world.

If this corporation is going to take that position in the courts, I am ready to challenge it in the name of the United States; for this Government, although it may be powerful, is not above the law and I hope will never be above morality. I object to the introduction of this document.

MR. KRESEL: I have listened very attentively, your Honor, to Colonel Anderson's very impassioned remarks, but I must confess that, interesting as they were, they do not touch the question that your Honor now immediately has before you. The question is as to the propriety of introducing these documents. We urge that they are admissible not only upon the ground that I have already assigned, but also upon the ground that the transaction your Honor has before you is being attacked as the result of a conspiracy. The motives of the officers of the Government responsible for the transaction have been attacked. The consideration is claimed to have been shockingly inadequate.

It certainly is material to show that at the same time the same officials, dealing with similar property, conveyed this property—I do not care to whom, whether it is to the United States Government or anybody else—at prices which the

Government claims are shockingly inadequate and as to which transactions it is not stated that their motives were in any way subject to attack nor any conspiracy charged in connection therewith.

It seems to us that upon that ground alone that evidence is admissible. When we come to argue this case we shall be prepared to meet Colonel Anderson upon the broad principles that are involved, of whether this was or was not confiscation, and, if it was confiscation, whether the power lay in the officers who exercised it to confiscate it. This is not the time to argue that, and your Honor can not decide this question of evidence upon that consideration.

We already have in evidence the conveyance by the Alien Property Custodian or the license by the Alien Property Custodian to the Government on 5700 of these German patents, and a release of the Government from all damages for infringement during the war, all for a consideration of $100,000. That is already in evidence. This is only in line with that other evidence—transactions occurring at or about the time when this transaction that is here being attacked was made, and by the same officials.

What position does the Government take with reference to these transactions? Does it take the position that these were unauthorized, that the Government now has not the title to these properties? Does it take the position that the Government can come in now and set aside these sales? Is it claimed that the license given to the Government on 5700 patents, which cover some of the most valuable inventions with reference to munitions, is invalid and that the Government has not that license now? Or that the Gov-

ernment has not been released of the hundreds of millions of dollars of damages that the Germans might have claimed for infringement of these very patents during the war? Can they blow hot and cold here; can they say on the one hand that the conveyance to us is invalid because not an adequate consideration has been paid, and yet that the conveyance to the Goverment is valid although not an adequate consideration has been paid? Somewhere, somehow, the Government has got to take a position in this case.

Your Honor has been endeavoring to get the Government to define its position as we have been going on. I confess that I am unable to learn what its position is on most important matters. But they will have to define their position sometime or other, and I shall wait with a great deal of interest to find out what position the Government is going to take with reference to the transactions between the Alien Property Custodian and the Government itself with respect to these German patents.

MR. ANDERSON: I can answer that.

MR. KRESEL: But I say now that these documents that I am now offering are admissible upon the grounds that I have urged, quite irrespective of what position the Government may take as to the validity of the transactions that they represent. If Colonel Anderson is ready to answer my inquiry, I shall be very glad to have him do so now.

MR. ANDERSON: My answer to that can be put in one sentence, that the whole business has got nothing whatever to do with this case. We are trying a lawsuit and not investigating the Government of the United States. The issues of this lawsuit are as to whether this was a valid trans-

action or not and when we get to the question of licenses and patents issued by the United States, we will deal with that question. Counsel has asked me a number of questions here and I have tried to answer them. I would like to ask counsel a question. Does he take the position that a sale of this property at a nominal consideration is or is not confiscation? Does he take the position under the Act of Congress that the Alien Property Custodian had a right to confiscate?

MR. KRESEL: I was very clear in defining our position in my opening——

MR. ANDERSON: So was I.

MR. KRESEL: And I will repeat it.

I say, under the act as it stood at the time that this transaction was made, the Alien Property Custodian, acting under the direction of the President, could have sold this property for a consideration whether it was adequate or inadequate.

I further say that the sale made to this Chemical Foundation was for an adequate consideration, as the Court will be asked to find when the evidence is in. I trust that that answers your question.

MR. ANDERSON: I understand counsel therefore to take the position that if he could sell it for an inadequate consideration, he had the power of confiscation. That necessarily follows, because inadequate consideration is necessarily confiscation.

THE COURT: What do you mean by "confiscation," Colonel Anderson? My problem is this. You have used the term "confiscation" and I am not criticizing it. I am only trying to find out just where we are. Yet in the same argument you have told me that Germany has nothing to do

with this because that has all been settled by a treaty. And if I understand you, you are suggesting an impropriety in certain acts because in pressing that attitude we are saying, or it is being said, that the United States is not keeping the faith, that it is acting in violation of international law, that the United States is doing precisely what it accused Germany of dong when it marched into Belgium, ignoring the treaty. Those several positions it may be possible to reconcile without difficulty. My lack of familiarity with this case, notwithstanding I have listened to it with much interest and during a month, has prevented my being able to reconcile those several contentions. I wonder if it would trouble you too much to help me.

MR. ANDERSON: Not at all. I am perfectly willing to do all I can to help out. But, as Mr. Kresel said, your Honor can not carry in mind my opening statement. I thought at that time I had made clear my contentions, but I am perfectly willing to repeat them.

In the first place, you asked me what I mean by confiscation. Confiscation is the taking of property by the Government for public use, or private use if it had the power to so apply it, without compensation to the owner or without fair compensation to the owner.

THE COURT: Compensation to the owner is a matter with which this court is not concerned.

MR. ANDERSON: Let us see if this court is not concerned. The Government of the United States seized this property and held it in its custody and stated in the act of seizure that it should be held in the interest of the United States, I think are the words used, or such other person as Congress might thereafter designate. That is the

effect of it in any event. Therefore, the primary interest in this property, when it was seized and passed into the hands of this Custodian, was in the United States, with the power in Congress either to perfect that into a complete interest or to return the property to its owners subject to such conditions as Congress might impose, if any, or none at all.

Therefore, the primary interest was in the people of the United States after the seizure. But what that interest was, the extent of that interest, or whether there should ever be a common interest in esse or present as distinguished from contingent, to use another expression, was dependent upon such action as Congress might in the future take. That was the status of this property when it was seized.

The interest of the United States, including whatever title it had or right to perfect title, was sought to be transferred to a private owner in the United States for, we will assume, a nominal consideration or at a guess. That was trust property. It was in the hands of the Custodian who was a trustee, whether you call him a trustee or not; because wherever a man holds property outstanding in the name of another, he is a fiduciary.

When the Alien Property Custodian—and I insist again that the President has nothing to do with that phase of it—undertook to divest the contingent interest of the United States and to divest the contingent interest of the owner, which was an actual beneficial interest, in that he had a property interest involved, the title to which had merely been seized and was held subject to whether Congress would in the future return it to him; and all that interest, that property right,

divided as I say in this intangible way between the United States and the original owner, was sought to be conveyed to a private owner, or sought to be conveyed to the United States, either—it does not make any difference in principle here; in the other aspects of the case it does—what was the effect?

The United States had seized this property for custody for the reasons stated in the law, recognized as one of the legitimate things to do in time of war. It never intended to deprive the owner of his property. We will assume that for the sake of argument now. That is an open question here. But by this act of sale at an inadequate consideration or nominal consideration, or if you could do as counsel suggests for no consideration except the general public interest, there was perfected an act of confiscation of the property as against the original owner.

The Government of the United States was charged with the duty and an obligation in that regard, a sacred duty and trust; and therefore it has a right to come into court, although the Germans may not have the right because the United States may stand between them and this transaction so that they can not get by—the United States has a right and a duty to come into court and say, Congress has never determined to confiscate this property and therefore, when you undertook to convey and divest any contingent right of the owner to its return and not return its value in the place of it, in money; or when you undertook to convey it and divest the interest of the people of the United States, and this property is now subject to be held as security for the payment of the debts by Germany, you have in effect

completed an act of confiscation which you were not authorized to do by any law.

Therefore, your act is void and the United States, whether it has a financial interest or not, or whether the enemy can enforce its rights against that act of confiscation or not, as a Government and trustee for all the people and charged not only with its beneficial interests but its honor and its welfare, has the duty to come into court and set aside the unauthorized act of its officers, take this property back into the custody of the United States, and let Congress do what it reserved the power to do and alone has the power to do under the Constitution, to determine what should be the final disposition thereof.

Is that clear, sir? If not, I shall be glad to answer your Honor further.

MR. KRESEL: I do not think it is clear at all, your Honor.

THE COURT: Have you finished, Colonel Anderson?

MR. ANDERSON: I am finished unless your Honor desires to ask me any further questions.

MR. KRESEL: The Government certainly can not confiscate its own property, can it? We can start with that proposition. It is not charged that the Government has confiscated this property, if the Government owned it.

Now, in so far as the Germans' interest is concerned, that is settled by the Treaty. The Government so claims. It can not be confiscation under that treaty. Every act that the Government took in the seizure of this property, if not in its disposition, is claimed by the Government to have been ratified by the treaty. Therefore, it can not be confiscation of the Germans' interest, assuming even that they had an interest

after the seizure; although the courts have held, interpreting this very act, the Trading with the Enemy Act, that the full title, legal and beneficial, passed to the Alien Property Custodian the minute he filed his demand. But assuming that the alien had an equitable right, that has been taken care of by the treaty. How then can it be said that there is any confiscation?

Therefore, I say that Colonel Anderson's argument does not clearly answer the question that your Honor has put.

MR. ANDERSON: It may not satisfy counsel. But if it does not satisfy your Honor, I will try to put it more clearly. The courts have not held that the full title, beneficial and legal, passed, because the courts have held without exception that when the Alien Property Custodian seized this property, he held it as trustee. The full legal and beneficial interest can not be vested in a trustee. In this case, he was a trustee with a *cestui qui* trust unnamed to be determined by Congress when it finally determined its policy as to this property and its return; and therefore the beneficial interest was outstanding continually; the legal title being held in trust for the final beneficiary named by Congress.

MR. KRESEL: I direct your Honor's attention to the decision of Judge Augustus Hand in the case of Junkers against the Chemical Foundation, which as I read the decision expressly holds what I say, that the German has no interest and can not be heard to question the disposition of the property by the Alien Property Custodian; and if he had a beneficial interest, as Colonel Anderson says, the courts of the United States would not grant him relief.

THE COURT: Could the United States have

seized and kept these patents, had there been no sale? And if the United States Government had that power, would the exercise of that power have been confiscation?

MR. ANDERSON: Absolutely, sir.

THE COURT: It would?

MR. ANDERSON: If the United States had seized and kept these patents, which an act of Congress alone could have given it the right to do, it would have been an absolute confiscation of private property if seized on land.

THE COURT: Then the ultimate conclusion from that is that the question of the ownership of these patents and any other property has been settled as between Germany and the United States by the treaty?

MR. ANDERSON: I think the right of Germany to intervene, to come in here and contest that right, has been waived in the treaty. But that does not affect a right as between the United States and its officers and citizens.

THE COURT: That brings me to another question which I have had difficulty with and your last statement gives me even more difficulty; and that is how is the keeping of the faith of the United States internationally involved in this question?

MR. ANDERSON: I will answer that right now.

If this transaction is valid and Congress determines to return all of this property to the Germans, which it must do, unless it is going to confiscate, some time or other, but subject to such conditions as it wants to impose, what can it return? Let us follow it through.

If this transaction is valid—and a sale for one dollar would have been just as valid——

MR. KRESEL: Will your Honor permit me to answer that question?

MR. ANDERSON: I am leaving out the question of consideration, whether it is valid or invalid. On the theory that they had a right to sell it for any price they saw fit, they could sell it for one dollar as well as $250,000 and in my view that is no more consideration than one dollar.

Congress had not determined whether it would return this property or not. Let us suppose Congress determined to return this property, and in the Winslow Bill it did determine to return all under $10,000 in value. What would it return? $40 a patent, less the cost of seizure charged up against it, when those patents are said to control an important branch of the industry of the United States and some of them are proved to have been of enormous value and were then earning an income which would have obtained more than the entire purchase price? Now, what can it return? That amount of money? That can not even be allocated. A patent that was not worth a cent and would expire within a year gets exactly the same as a patent worth a million dollars. Then if Congress perfects the contingent right of the Germans which was left open in the Trading with the Enemy Act into an absolute right to this property, when his property was seized he had something worth a million dollars and when it was returned he had something worth $40—and if that is not confiscation, then we have to wipe out all of the decisions of the Supreme Court of the United States.

THE COURT: Let me ask you this, Colonel Anderson, because you are dealing with a question that causes me much trouble. It has been charged here that the Haber patents did not make such disclosures as would enable the art or those

skilled in the art in the United States to operate them and that it would require a period of development and experiment in order to enable American chemists to use those patents or the processes therein described on a commercial scale.

Let us assume for a moment that that allegation or charge is true. Let us assume for a moment that Dr. Holdermann's testimony from the German's standpoint was true, that those patents were worth to the Germans $17,000,000. And let us assume, in the face of the non-disclosure of the Haber patents and even in the face of scientific knowledge and skill on the part of American chemists, if you will, if such be the fact, that they lack commercial value to an American purchaser; and yet that Congress had vested the Alien Property Custodian with power to sell these patents at public sale to an American purchaser; and let us assume, for the purpose of this inquiry, that the full value of those Haber patents to an American, whoever he was, however rich or well financed he may have been, was the sum of $1000, and that such a sale were made; was or was not such a sale confiscation from the international point of view?

MR. ANDERSON: Your Honor is assuming so many predicates that I find it a little difficult to answer your question. It would depend upon a very great many conditions. For instance, your Honor has limited your inquiry to what it would be worth to an American purchaser. Of course, I do not agree to any of the premises that you laid down.

THE COURT: Don't you agree to this, that Congress did give an unlimited power to sell for full and fair value to an American purchaser? I thought you indicated that the full and fair value

under those statutory provisions was to be ascertained from the American purchaser's standpoint and not from the German owner's standpoint. Am I right or wrong?

MR. ANDERSON: I do not know that your Honor is right on that proposition. I will concede that at the time the sale took place, a German could not be a purchaser, because we had no treaty with Germany; and he was excluded. I do not know whether that sale was limited to American citizens, if the President so determined. That is entirely another question.

THE COURT: I do not follow you there.

MR. ANDERSON: It says that it must be at public auction, except when sold to the United States. I would like to get the exact language of the act.

MR. KRESEL: To the highest bidder, at the place of sale, to an American citizen. Those are the four elements.

MR. ANDERSON: (Reading.) "That any property sold under this Act, except when sold to the United States, shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement of time and place of sale which shall be where the property or a major portion thereof is situated, unless the President stating the reasons therefor, in the public interest shall otherwise determine."

There is not a word said about private sale there, but we have been going on the theory that presumably he could authorize a private sale. If he could authorize a private sale, he could authorize it to be sold to other than American citizens except perhaps there may be limitations in the law. I have not looked at it. He could not have sold it to Germans, although he had a very broad power to license.

MR. KRESEL: But the Court has assumed a public sale.

MR ANDERSON: He could have authorized a sale to an English or French purchaser, let us assume.

THE COURT: I will be glad to hear you, Mr. Kresel, on that.

MR. ANDERSON: Your Honor asked me if I would not concede that predicate and I said no.

MR. KRESEL: The Court's question was, assuming it was a public sale.

MR. ANDERSON: I think the Court and I can probably agree on the question. I am trying to do it.

In the second place, the record discloses here that the United States by virtue of the act of the President himself was authorized to purchase these patents for $10,000 and to expend $350,000 in their development, and the testimony is that the development of one of the plants was dependent upon the acquisition or use of these patents.

Therefore I can not reach any conclusion predicated upon such conditions as your Honor has described. I will only answer your Honor's question generally and it is the best I can do at this time, because I can not analyze a long question like that and reach a conclusion by which I would like to be even temporarily bound. I will say this, that any sale of the Haber patents or any other patents which did not bring a fair value——

THE COURT: Ascertained from what standpoint?

MR. ANDERSON: Ascertained from all the surrounding facts and circumstances at that time, like other value is ascertained, and that means thousands of surrounding facts and circumstances

to be considered. What is the fair value is a conclusion which the Court has got to reach, or a jury, or Commissioners, from all the testimony they can get.

THE COURT: Is it your contention that that fair value is the same whether ascertained from the German standpoint or American standpoint?

MR. ANDERSON: I think that the position of this industry in Germany is one of the important facts to be borne in mind in connection with this fair value; yes, sir. And I further take the position that the mere fact that a German could not bid at this time, since there was no obligation to sell these patents, does not necessarily exclude what a German would have been willing to give if he could bid, because we were negotiating the treaty at that time.

THE COURT: Then if there was a wide gap between the German value, and the American value, the statute, notwithstanding it authorized a sale, by the same token denied the right which it expressly gave.

MR. ANDERSON: No, sir.

THE COURT: Is that not an inevitable conclusion?

MR. ANDERSON: No, sir; it is not. I say that the German value and the value in Germany and the condition of the industry under these patents in Germany are essential facts to be considered in arriving at what was the fair value of those patents. Other facts will also be considered.

When I come to argue this case, I expect—I hope to be able to if I can live through it—to collate and present to your Honor the facts on which I think the value should be predicated. Your Honor may consider some others. I do not know. But your Honor is practically sitting in

the position of a commissioner in condemnation. You have got to find out what was the fair value. You may make a mistake as those commissioners do and the courts may make a mistake.

But the test of this sale is fair value and whenever you get below what the courts ascertain to be fair value, just as in a rate case very often mistakes are made, then it is confiscation.

THE COURT: I do not want to press you, but I miss your conclusion, Colonel Anderson, and in this connection I am going to make an inquiry of you, if you do not mind.

MR. ANDERSON: Not at all.

THE COURT: Because it is a difficult problem to me, though probably to you it may seem very clear. There are numerous complications. If I understand you, the United States could seize these patents and hold them and either give them back to Germany, or it need not.

MR. ANDERSON: It could by confiscating them, yes, sir; provided Congress authorized it.

THE COURT: But could it not seize them and hold them and adjust the price that Germany should be allowed for them at the reparations table?

MR. ANDERSON: I should think it might have done that, and if it gave a fair price, it was not confiscation; but if it did not give a fair price, it would have been to that extent confiscation, the exercise of a power instead of a right.

THE COURT: What I am trying to get at is this: I am not trying to mislead; I am trying to present the situation fully before I ask my question, and if there is any doubt about what I am trying to get at, I would be very glad to have you tell me. But it seems to me if the United States were to keep the patents, then the question as to what compensation should be paid to the German

owners would be a question for determination at the reparations table.

MR. ANDERSON: Not at all, sir. When we negotiated the Treaty of Peace, the Trading with the Enemy Act was in force, and it was presumed by the negotiators, I think, that Congress would exercise its power under that act. Now, the treaty provided that this property might be held as security for the compliance by Germany with certain conditions, obviously indicating that it never intended to confiscate the property and never thought of confiscating the property. It assumed that Congress had the power at any time to waive that provision, and has waived it, as to all property under $10,000, and returned it.

That being true, suppose Congress passed an act that they return all German property; and suppose they had sold this property or had sold a piece of land for ten per cent. of its value, and found the title gone and only ten per cent. in its treasury; and Congress ordered all the property returned; would not the original owner of that property, who, by the final act of Congress, had always been entitled to receive the property and whose right was confirmed. He has turned over $100,000 worth of property. Congress says: "I am going to hold this property, and I reserve the right to determine to whom it goes at the end of the war." He says, "That is all right. I cannot help that. You have got title to it." Congress says, "Now, I am going to give it back to you or I am not going to give it back to you. I have got that power."

Then the war goes on and is over, and peace is made. In the meantime Congress, in the exercise of its discretion, says, "I am not going to hold all this property here. Here are manufac-

turing plants that are useful and ought to be freely operated. Instead of holding that property in the custody of the law in kind, I will sell that property; I will authorize my agents to sell that property, and substitute the proceeds for the property,"—exactly like a foreclosure sale, nothing more or less, or a sheriff's sale; that is all.

Now, where are we? The property has gone from the owner and its proceeds are substituted. Now suppose the agent of Congress, instead of selling this $100,000 worth of property, clearly worth $100,000, sells it for $5000, and puts $5000 in the treasury, and Congress comes along after the war is over and says, "We are going to return all this property to the owners. We only intended to keep it to prevent its being used improperly during the war. We are going to return it," so any owner can come in and get his property; and this man who turned over $100,000 worth of property comes in and finds that he has got a right to receive $5000 worth of property, $95,000 worth of property having been confiscated, of course, there is no other answer to it.

Now, he may have no redress; but the Government of the United States would be in a nice fix if it did not have redress through the courts, because there is where the law of the United States is enforced, and the law never gave the Alien Property Custodian any power to confiscate.

There is your case as clearly as I can see it, and there is where confiscation comes in. It was all inchoate to a certain extent. There were certain undefined conditions surrounding this property until Congress acted; but Congress had the duty, not only to the people of the United States, but to the international honor of the United States to keep this property where it could return that

property in kind, or its full value if it elected to return at all; and nobody has a right to decide that question but Congress.

THE COURT: But the Trading with the Enemy Act did give to the Alien Property Custodian the power of sale, did it not?

MR. ANDERSON: Yes, sir, and the law gives to your Honor the power to sell a railroad in your hands; but you cannot give it away.

THE COURT: Where are we?

MR. KRESEL: I was offering a document, your Honor, when this argument took place.

I now offer in evidence certified copy of an instrument dated the 6th day of February, 1919, which is a conveyance by the Alien Property Custodian to the United States of America, represented by the Secretary of the Navy, of thirty-four patents, for a consideration of $1190.

MR. ANDERSON: Objected to on the grounds previously stated.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 144." *(See Exhibits, Vol. V, page 2797.)*

MR. KRESEL: I now offer in evidence an instrument of assignment from the United States Government by F. D. Roosevelt, Acting Secretary of the Navy, dated the eleventh day of November, 1919, re-conveying to the Alien Property Custodian three of the patents that had theretofore been conveyed by the last Exhibit No. 144, for a consideration of $105.

THE COURT: Admitted, subject to the same objections stated by Colonel Anderson.

Received in evidence and marked "Defendant's Exhibit 145." *(Se Exhibits, Vol. V, page 2801.)*

MR. KRESEL: I now offer in evidence a license and conveyance dated the third day of April, 1920, from the Alien Property Custodian to the United States of America, whereby, for a consideration of $2000, the Alien Property Custodian gives a license to the United States of America on the 72 patents enumerated in the instrument, and also conveys to the Government all rights for damages for infringement of 84 additional patents therein included, and conveys to the United States two patent contracts therein especially enumerated. I want to state that the schedule which is attached to this instrument shows that the patents covered gun sights, periscopes, lenses, and so on, used by the War Department.

MR. ANDERSON: I make the same objections.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 146." *(See Exhibits, Vol. V, page 2803.)*

MR. KRESEL: In connection with the license issued by the Chemical Foundation to the Government under date of November 17, 1921, your Honor will recall that a preceding license, the one dated February 26th, 1921, is therein mentioned and thereby cancelled. In order that the record may be complete, I now offer in evidence that instrument of February 26th, 1921, which is now marked "Defendant's Exhibit K for Identification."

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 147." *(See Exhibits, Vol. V, page 2811.)*

THE COURT: We will now take the usual recess.

(Recess until 1 o'clock P. M. Standard time.)

AFTER RECESS.

MR. KRESEL: Before I call a witness, your Honor, I have two more exhibits I would like to offer at this time. Your Honor will recall that Colonel Anderson asked Mr. Garvan yesterday whether there were any licensees of the Chemical Foundation that were not stockholders.

THE COURT: Yes.

MR. KRESEL: I offer in evidence a list of licensees of the Chemical Foundation who are not stockholders thereof. Colonel Anderson, you have examined that.

MR. ANDERSON: Yes, I have seen it. I have not examined it, but I have seen it.

THE COURT: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 148." *(See Exhibits, Vol. V, page 2837.)*

MR. KRESEL: I also offer a list of those licensees who are stockholders, just to make it complete.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 149." *(See Exhibits, Vol. V, page 2841.)*

MR. KRESEL: Colonel Anderson, I want to put in this letter from Admiral Grayson. Your Honor will recall that upon the examination of Mr. Palmer I desired to put in evidence a letter received by Mr. Palmer from Admiral Grayson, but upon objection that was not permitted. I understand that Colonel Anderson is now willing to concede that if Admiral Cary T. Grayson were called as a witness here, he would testify that upon the trip to Europe made by President Wilson, on which trip Admiral Grayson accompanied the President, leaving New York, March 4, 1919, Admiral Gray-

son had with him a copy of the report which is now Defendant's Exhibit 30, which is Mr. Palmer's report, which had been given to him by Mr. Palmer; and that he would testify further with reference to that report as follows: That he read the report; that the President did not get an opportunity to read it on the *George Washington*, as he was sick part of the time going over and was confronted with such an accumulation of correspondence and official documents that it was impossible for him to examine the report, but that Admiral Grayson read the report and told the President in detail about the contents, and that the President agreed that it was a wonderful accomplishment.

I have paraphrased the statement contained in Admiral Grayson's letter which Colonel Anderson has, and I now ask to introduce the copy of the letter from Admiral Grayson to Mr. Palmer upon this subject.

MR. ANDERSON: In order to save the necessity for calling Admiral Grayson, and in convenience to him, the Government does not object to the introduction of the letter with the same force and effect as if Admiral Grayson testified to its contents, but subject to the general and specific objections which would apply to Admiral Grayson's letter if he testified to the contents. It agreees also that the reference to the report, as contained in the second paragraph, first line, of the letter is the report of Honorable A. Mitchell Palmer as Custodian, introduced in evidence as Defendant's Exhibit No. 30.

THE COURT: Admitted under those circumstances.

Received in evidence and marked "Defendant's Exhibit No. 150." *(See Exhibits, Vol. V, page 2843.)*

THE COURT: Does your agreement go so far as to indicate to whom this letter is addressed?

MR. KRESEL: Yes, the letter is addressed to Mr. Palmer.

MR. ANDERSON: Of course, the letter speaks for itself, and the agreement is that he would testify to the contents of that letter.

THE COURT: That he sent the letter and the facts therein stated are as stated there.

MR. ANDERSON: That he would testify to the facts therein stated; but subject to the general and specific objections.

MR. KRESEL: I just read this one paragraph:

"Unfortunately, the President did not get an opportunity to read it on the *George Washington*, as he was sick part of the time coming over, and he was confronted with such an accumulation of correspondence and official documents that it was impossible for him to examine your report. However, I told him in detail about the contents, and he agreed that it was a wonderful accomplishment."

THE COURT: And the date of the letter is what?

MR. KRESEL: April 17, 1919, dated in Paris.

Now, Dr. Volwiler, will you take the stand, please?

ERNEST H. VOLWILER.

ERNEST H. WOLWILER, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 1. Will you please state your full name and your residence and your profession?

A. Ernest H. Volwiler, chemist, of Chicago, Illinois.

Q. 2. By whom are you now employed?

A. The Abbott Laboratories of Chicago.

Q. 3. Have you received any degrees from any universities?

A. I have. I received a degree of Bachelor of Arts at Miami University which is in Ohio and a degree of Doctor of Philosophy from the University of Illinois.

Q. 4. Since your graduation from the university and before you became employed by the Abbott Laboratories, what did you do?

A. For a period of about three or four months I was instructor in Miami University in chemistry and during the period from 1914 to 1917 I was instructor in organic chemistry at the University of Illinois.

Q. 5. How long have you been with the Abbott Laboratories?

A. Something over five years.

Q. 6. What is the business of the Abbott Laboratories?

A. The manufacture of pharmaceuticals and intermediates for the production of pharmaceuticals.

Q. 7. Has it a large business in that field?

A. It is one of the largest in the country and it is very near the top in the manufacture of synthetic organic medicinals.

Q. 8. Will you please, in a few words, define to us what is meant by synthetic medicinals?

A. I will do that by differentiating between those and the other classes of medicinal products. On the one hand we have naturally occurring products like the alkaloids, morphine and so on, cocaine, and on the other hand we have the synthetic products which are made from materials the same or similar to those used in the manufacture of dyes. In that class there are

products such as the arsphenamines, procain, which is the same as novocain; barbital and cinchophen, and so forth.

Q. 9. When you speak of the arsphenamines, what does that class include?

A. That includes the products to which the Germans gave the name salvarsans, namely, salvarsan, neosalvarsan, silversalvarsan, and sodiumsalvarsan, and the new one that has recently come into use in this country know as sulfarsphenamine.

Q. 10. How extensive is the manufacturing end of the Abbott Laboratories?

A. Do you mean in personnel?

Q. 11. If you will, please, in personnel and departments and places where they manufacture.

A. The main manufacturing plant is at Chicago. Altogether in the Abbott Laboratories there are about twenty-five departments. Of course, that includes other departments besides the strictly manufacturing departments. There is some manufacturing done at Toronto, Canada, where we have a branch. There are branches all over this country in the larger cities as well as in other foreign countries.

Q. 12. Can you tell approximately how many distinctive products in the pharmaceutical line the Abbott Laboratories manufacture?

A. About 1300.

Q. 13. How long has that business been established?

A. About thirty years.

Q. 14. What is your position in the Abbott Laboratories?

A. Chief chemist.

Q. 15. How long have you been chief chemist?

A. About two years.

Q. 16. And prior to that, what was your position?

A. When I first went with the Abbott Laboratories, I was in the plant as operating chemist and later as research chemist and then as chief chemist.

Q. 17. Do the Abbott Laboratories maintain any research departments?

A. Yes.

Q. 18. How many and where are they located?

A. We have one in Chicago and one in Philadelphia in connection with the Dermatological Research Laboratories which were purchased by the Abbott Laboratories in 1922.

Q. 19. Have you, Doctor, ever examined the German patent covering salvarsan?

A. I have.

Q. 20. Which is United States Patent No. 986,148?

A. I have.

Q. 21. Have you also examined the United States patent covering neosalvarsan which in its reissue number is 13,848?

A. I have.

Q. 22. Have you also examined the United States patent covering novocain, which is known by the number 812,554?

A. I have.

Q. 23. Will you state when you examined these patents and, if more than once, state the number of times that you did?

A. Of course, those patents are on file in our offices and naturally in working with these products, since we are manufacturers of them, we have very frequent opportunity and must frequently refer to them in order to compare the methods in use. But in addition to that we have several times examined the list of drug and medicinal patents which were sent to us by the Chemical Foundation, with a view to seeing whether we could use any of the patents listed there.

Q. 24. How often have you made such an examination?

A. Three times in three years.

Q. 25. That is the examination of the lists sent out by the Chemical Foundation?

A. Of the entire list, which is included in this booklet entitled "Drug and Medicinal Patents owned by the Chemical Foundation," and which includes upwards of 250 to 300 distinct patents.

MR. KRESEL: That list, your Honor, is already in evidence, so I will not again refer to it.

THE COURT: You do not recall the exhibit number, I suppose?

MR. KRESEL: I am sorry that I do not recall it.

MR. GALLOWAY: I will get it for you in a minute. It is No. 123.

THE COURT: Is that an exhibit of the defendant or plaintiff?

MR. GALLOWAY: It is Defendant's Exhibit 123.

MR. KRESEL: And is this the original (taking same)?

MR. GALLOWAY: Yes, that is the original.

Q. 26. Doctor, I first will take up with you the novocain patent. Will you state whether or no the Abbott Laboratories pursued any research in the United States in the manufacture of novocain?

A. They did, not only in their own laboratories but in conjunction with the University of Illinois. There were a number of men working on the preparation of novocain under the direction of Professor Adams.

MR. ANDERSON: I wish you would ask him to confine his answers to what he actually knows of his own knowledge.

MR. KRESEL: Yes.

Q. 27. I think you have stated that novocain is also known by the name of procain?

A. Yes.

Q. 28. It is the same product?

A. Yes.

Q. 29. Do you know how many men in the Abbott Laboratories or from the Abbott Laboratories, and how many men from the staff of the University of Illinois, were engaged in that research work?

A. It varied from time to time. Of course, the investigation was a somewhat prolonged one; but it varied from three to six men—three to six research chemists that were investigating it.

Q. 30. You have mentioned Professor Adams. What is his full name?

A. Professor Roger Adams.

Q. 31. And where is he professor?

A. At the University of Illinois.

Q. 32. And what is he professor of?

A. Professor of organic chemistry.

Q. 33. Will you state when this research work was being pursued?

A. It was begun sometime in 1916 and was continued until late in 1918.

Q. 34. Did you take part in that work?

A. I did.

Q. 35. In the course of that work did you and the others who were associated with you in that undertake to manufacture novocain according to the specifications set forth in this novocain patent No. 812,554?

A. Certainly.

Q. 36. Will you state in your own way what you found (when I say "you" I mean you and the others who were co-operating with you) in that respect?

A. In the first place, we realized that any method——

Mr. Anderson: One minute. In addition to

my general objection, if your Honor please, I want to object to this evidence. The witness can state what he did, but I do not think he can state that he undertook to manufacture under that patent. That is a conclusion. He can state what he undertook to do, what he did; but as to whether he undertook to manufacture under that patent is his construction of the patent, and therefore I object to that evidence.

MR. KRESEL: He is a chemist and he can state.

MR. ANDERSON: It does not matter; he can not construe a written instrument.

MR. KRESEL: I am not asking him to construe the instrument. He can state what he did in seeking to carry out the steps outlined in the patent. That is my question.

MR. ANDERSON: The preceding question was, "Did you undertake to manufacture under that patent?" and he said he did. Now, I object to that question and move to strike it out.

MR. KRESEL: No. Even if that had been the question, it would have been in line with the question that you put to Mr. Metz; but have the question read and you will see that that was not the question. Please read it, Mr. Stenographer.

(Q. 36 repeated as above recorded.)

MR. ANDERSON: I move to strike that out.

MR. KRESEL: Read the last question.

(Q. 36 repeated as above recorded.)

MR. ANDERSON: I object to that question on the ground he can testify to what he did, and what he got, and so forth, and the results; but he can not testify what other people did.

THE COURT: Unless he knows.

MR. KRESEL: He can testify what he knows they did; what he observed that they did.

THE COURT: Yes, what he knows. Now, whether he undertook to manufacture under that patent I should think would be a fact, Colonel Anderson.

MR. ANDERSON: From his viewpoint, yes, sir; but he did not state from his viewpoint. He stated he undertook to manufacture under that patent, he and others engaged in this work.

THE COURT: Now, then, you can either of you ask him what he did when he undertook to manufacture under that patent.

MR. KRESEL: I will put the question now, sir.

Q. 37. Will you please state what you did and what those that were co-operating with you did, to your knowledge, in following out the specifications that were in this patent that I have mentioned, and state what results were accomplished?

MR. ANDERSON: I object on the ground that the question of whether he was following out the specifications when he states what he did is a question for the court.

THE COURT: I thought your question was going to be what he did when he undertook to manufacture under this patent.

MR. KRESEL: I understood that that was objected to by counsel.

THE COURT: No, the bare question was objected to. Now, if he does not say what he did when he undertook to manufacture under this patent, then we will be confronted with a possible conclusion; but what Colonel Anderson wanted to know, as I understand it, was what he did, the acts and facts in connection with his undertaking to manufacture under the patent.

Q. 38. Will you state, Doctor, what you did and what those that worked with you did in undertaking to manufacture under this patent?

A. At the first, and that work was done at the University of Illinois——

MR. ANDERSON: May I ask, were you there?

THE WITNESS: Yes, I was there. You see, that work was started in 1916, and I did not leave there until 1918.

A. (Continued.) We tried to follow out the method which was given in the patent.

MR. ANDERSON: I object.

THE COURT: Are you going to follow that by a statement showing the detail, the things that you did?

THE WITNESS: Yes.

THE COURT: Then the objection will be overruled.

A. (Continued.) That method involves the use of ethylene-chlorohydron as an intermediate. We found in the first place that we had to produce our own ethylene-chlorohydron because it had not been a manufactured product in this country to any extent previously, and later what was manufactured was being employed for the production of products such as mustard gas. So it was not a readily available product. In the second place, even when we prepared the product ourselves and used it, we did not get in the first place a satisfactory yield and in the second place the product was not pure and involved considerable purification to get it to a state where it would be satisfactory for use.

Q. 39. I wish you would enlarge somewhat or define for us what you mean by satisfactory yield.

THE COURT: Of what? I do not know whether he means the product called for by the patent.

Q. 39. (Continued.) And yield of what? You understand the question?

A. Yes, I understand the omission that I made. By a satisfactory yield I mean a satisfactory yield of novocain or procain. That is what I referred to—

yield of the final product desired. We must take into consideration the price at which the product is selling, or the state of the demand for it, and the cost of producing the product. For instance, if a product was selling at $100 a pound, you might be able to produce the product with a 10 per cent. theoretical yield and still be able to sell it at a profit. On the other hand, if the product were worth only $5 a pound, it might be necessary to get a higher theoretical yield in order to be able to sell it, and of course at that time when the product was scarce it was necessary to produce it—I should say when the product was so badly needed it was necessary to produce it in as good yields as possible.

Q. 40. You say that you found you could not get a satisfactory yield. Will you please state in what respect the yield of novocain by the yield in this process, assuming that you had the intermediate, was unsatisfactory? I mean was it in weight, or cost or what?

A. Well, in the first place in quantity, and that involved cost because the less you obtain in quantity the more it is going to cost per pound, because the more intermediates you have to use in order to prepare it.

Q. 41. With reference to the imperfections in the purity of the product that you spoke of, in what way was it impure?

A. There are definite standards to which a compound like procain must conform. It has a definite melting point, it has a definite solubility in various solvents. There are probably a dozen or two tests to which a product of this kind must conform. Those chemical tests indicate the presence or absence of impurities. In the second place, toxicity is involved; since novocain or procain is injected it is a dangerous product to use unless it is of relatively low toxicity.

Q. 42. You say it is injected. Please state what

this product is used for, how and where in the human body it is usually injected?

A. It is used in the carrying out of operations as a local anaesthetic and it has come into world-wide use for that purpose, being used probably more than any other local anaesthetic for the production of local anaesthesia. It is used in dental work, it is used for minor operations such as the amputation of a finger or in cases of the removal of tonsils, etc., and is also used for major anaesthesia, major operations such as removing a limb or removing an appendix, things such as that.

Q. 42. You don't mind if I ask you for these definitions, because we do not understand them. What do you mean by toxicity?

A. Toxicity means the poisonous character of the drug.

Q. 43. Is there a way known to chemists of determining the toxicity or non-toxicity of a drug?

A. Yes, it is known to chemists although it is not ordinarily the chemist who carries out the work. That is a pharmacological problem and involves the injection of the drug into smaller animals, concerning which the toxic dose of the pure product is known.

Q. 44. Did or did not the Abbott Laboratories manufacture novocain following out the steps for its production described in this patent?

MR. ANDERSON: I object. He can state what he did. Following out the steps of a patent is a clear conclusion and involves the construction of a written instrument.

MR. KRESEL: If it be a conclusion, it is only a conclusion of fact and this witness is an expert called for that purpose. That is the only way that the Court can be given the information.

THE COURT: The element missing, as I under-

stand it, to qualify this man as an expert for that purpose is that you have not shown his familiarity, as I recall the testimony, with patents at all or with the terminology of this patent, for instance. I do not know that he has seen patents. He has proved himself qualified as an expert in chemistry, in organic chemistry. Now then, you ask him as to whether he has followed out the provisions and requirements of this patent. As I see it, there is something missing to enable him to answer that question.

MR. KRESEL: I will see if I can qualify him.

Q. 45. Dr. Volwiler, have you had occasion in the course of your professional work to examine other patents than these three that you have described dealing with drugs and organic chemicals?

A. Yes.

Q. 46. Can you approximately state how many such patents you have examined and studied?

A. Up to the present, you mean?

Q. 47. Yes.

A. Probably several hundreds.

Q. 48. And have you examined and studied any other patent, for example, for the manufacture of similar products like novocain?

A. I have.

MR. ANDERSON: I object to the question on two grounds: First, leading; and second, he is asked to determine what similar products are.

THE COURT: The second ground I did not get.

MR. ANDERSON: The second ground is that he determines what are similar products.

THE COURT: I think the objection is well taken, but if it is asked to meet the suggestion I made a moment ago, I think it is unnecessary. The objection is sustained.

Q. 49. I repeat the question, Doctor, and it is, whether the Abbott Laboratories manufactured and produced and sold novocain under this novocain patent, the number of which I have given you.

MR. ANDERSON: I object on the ground that manufacturing or producing under a patent is a conclusion; and also, what is novocain is a conclusion.

MR. KRESEL: What is novocain is a conclusion?

MR. ANDERSON: Yes, sir.

MR. KRESEL: My attention is directed to the fact, your Honor, that questions similar in form were asked by Colonel Anderson of Mr. Metz and also of Dr. Holdermann, and I doubt whether I objected.

MR. ANDERSON: On the contrary, the objections were sustained and I had to reframe the question a dozen times.

MR. KRESEL: Your Honor will recall that that is the very question your Honor had up with Colonel Anderson when you adjourned court and asked him to point out in the evidence the questions that had been so ruled out and had to be reframed. Your Honor recalls the result of that.

MR. ANDERSON: That was another thing entirely.

THE COURT: It is just a question of time and this is only the 6th day of July. The objection will be sustained. You may inquire into the facts in detail.

Q. 50. Have you a copy of the patent on novocain?

A. I do not have a copy.

Q. 51. I show you Plaintiff's Exhibit 227 and direct your attention to the last sheet of that exhibit and

ask you to state whether those are the specifications of the novocain patent?

A. It is.

Q. 52. And are those the specifications that you had before you when you were pursuing this research work that you described into the manufacture of novocain?

A. They are.

Q. 53. Please read the first step in those specifications. Read it out loud.

A. The first paragraph which discloses the invention is:

> "I have found that the alkamin esters of para-aminobenzoic acid may be obtained by reducing the alkamin esters of para-nitrobenzoic acid. The compounds thus obtained hitherto unknown, are valuable for medicinal purposes as local anesthetics."

Q. 54. Is that the first paragraph? Have you finished the first paragraph?

A. The first paragraph reads:

> "Be it known that I, Alfred Einhorn (etc.) have invented certain new and useful improvements in the preparation of alkamin esters of para-aminobenzoic acid, of which the following is a specification.

Q. 55. Now then, please read the first paragraph of the specifications.

A. Do you mean the one I have just read?

Q. 56. Was that the first one?

A. That is a general description and then it goes on and gives a specific description.

Q. 57. Give me the first step or first paragraph of the specific description.

A. "To prepare the said new esters of alkamins, the process may be carried out, for instance, as fol-

lows: Ten parts, by weight, of para-nitrobenzoyl-diethylaminoethanol, which, for instance, may be obtained by heating for one day to 100° to 120° centigrade para-nitrobenzoylchloroethanol (obtained by heating ethylene chlorhydrin with para-nitrobenzoyl-chlorid) with ten parts, by weight, of diethylamin being an oil readily soluble in ether and solidifying in the cold, are allowed to digest at a moderate temperature with thirteen parts, by weight, of tin and twenty-five parts, by weight, of concentrated hydrochloric acid.

Q. 58. Now, stop there, please. Did you in this research do as directed in the paragraph that you have just read?

THE COURT: Assuming that the same objection is made to this question as heretofore, it is objectionable on two grounds. First, it is leading and second you are asking him whether he did that, which is a conclusion of facts instead of asking him the steps which he took. The implied objection is sustained. In order that you may understand the ruling which I am making with respect to this, we are now into a patent suit pure and simple and you are being required by me to take such evidence as you would be required to take if a plaintiff or defendant in an infringment suit in a patent case. If it is your purpose to put in evidence with respect to these 4700 patents, we will go through it.

MR. KRESEL: With respect to what?

THE COURT: If it is your purpose to show with respect to all these patents, for instance, that they were workable or unworkable, under the specifications you will have to do it in that way. If we have to try 4800 infringement suits we will have to try them.

MR. KRESEL: Very well your Honor.

Q. 59. Doctor, you may refresh your recollection

with the specifications of this novocain patent that you have before you and I now wish you would state specifically the steps you took in undertaking to manufacture novocain according to those specifications.

A. I think the simplest way to state that will be merely by reference to what I have already read, which we followed out in detail, using the temperatures, the amounts and if necessary, wherever it stated in a case of this sort pressures, that are given in the patent.

Q. 60. I think, Doctor, I am going to ask you, if you will, instead of saying that you followed out, to state what you did. Do you understand me? Just state what you did.

A. We treated para-nitrobenzoylchloroethanol, which we prepared as stated here, by treating para-nitrobenzoylchlorid with ethylene chlorhydrin, and then treating the resultant product with diethylamin at the temperature of 100 to 120 degrees.

Q. 61. Fahrenheit or centigrade?

A. Centigrade. Then the resultant product was reduced by the use of tin and hydrochloric acid, and that gives procain or novocain in the crude form.

Q. 62. What, if any, other step did you take in undertaking to manufacture this product according to these specifications?

A. The next step is the purification of the crude product which is obtained and which is here stated in the patent specification to be accomplished by recrystallization from alcohol, and that was the step that we took.

Q. 63. Were there any additional steps taken by you in accordance with the specifications there set forth?

A. No, that is the only information, briefly stated, which the patent specification divulges.

Q. 64. Having followed out the steps that you have just described, what result did you obtain?

A. We obtained a low yield of an impure product.

Q. 65. Of what?

A. Of procain—novocain.

Q. 66. I will ask you whether the Abbott Laboratories continued to manufacture novocain according to these specifications that you have described.

A. They did not.

MR. ANDERSON: One minute; I object on the ground that the question of how they manufacture novocain—they can show how they did it, but whether they undertook to manufacture in accordance with those specifications is purely a conclusion.

THE COURT: Do you propose to show the changes in the process?

MR. KRESEL: I do, sir.

THE COURT: Objection overruled.

Q. 67. Please now state what, if any, other, different method the Abbott Laboratories pursued in the production of novocain.

A. Professors Adams and Kamm, of the University of Illinois, with the assistance of a number of students—graduate students, including myself, worked out a method which was patented later, omitting the use of ethylenechlorohydrin, the objections to which I have already stated, and substituting therefor the use of ethylenebromid, which involved an altogether new method for the production of procain.

Q. 68. Will you state when this new method was perfected?

A. Probably some time late in 1917.

Q. 69. You have stated that it was patented. Do you remember when?

A. I do not remember the exact date.

Q. 70. Have you a copy of the patent?

A. I do not think so. That is the only patent on the list that I have not with me.

Q. 71. Do you know the number of it?

A. It is in that letter.

Q. 72. See if you can refresh your recollection from that as to the number of it. (Handing witness book.)

A. Yes. It is patent No. 1,260,289, taken out March 26, 1918.

Q. 73. Have or have not the Abbott Laboratories been manufacturing or selling procain made as you have described under the Adams and Kamm process?

A. May I ask you to read that question? I did not get the first few words of that.

(Q. 73. repeated as above recorded.)

A. They have.

Q. 74. Do you know, Doctor, approximately how much money was spent by the Abbott Laboratory in this research work that was described?

A. I have the figures here somewhere.

MR. ANDERSON: Unless the witness can testify to the facts—I want to cross-examine him on the figures and unless he has the sources of the information I shall have to object to it.

THE WITNESS: This information was taken from the books of the Abbott Laboratories.

MR. ANDERSON: By you?

THE WITNESS: By request of the Cost Department, yes, by personal request.

MR. ANDERSON: I will want to go into that on cross-examination, if he is going into what they have been manufacturing and selling, I want to go into it very fully and we may as well get the information now as well as any other time.

MR. KRESEL: That is all right. Will you give the figure, Doctor?

MR. ANDERSON: I object to his giving any figure, on his own statement that it was not taken by him from the books, but by the request of some-

body else. If he is going to testify about the business and earnings of the Abbott Laboratory, I am going into the whole thing, and we better get the fundamental evidence right now.

MR. KRESEL: Let us first deal with this one question. Do I understand the objection is made because he did not go to the books himself and take it off?

MR. ANDERSON: He has not the information here. He does not appear to be an accountant and the books were not kept by him. He does not appear to know the facts. If this information goes on the record I will want to cross-examine him. If he does not know what information is on the record I have not any chance of cross-examining. I may as well give notice now that I object to that evidence unless it is properly proved. The foundation has not been laid.

Q. 75. Do you know, Doctor, how much was spent in research, apart from the information you say was given to you by the accounting or cost department?

A. I could make a pretty good estimate, because I know the salaries of the men involved, I know the approximate rate of overhead charges, I know the cost of equipment used in it. So that although my estimate would be rough without reference to the figures, yet I could come within a few thousand dollars of it, I think.

MR. KRESEL: May I take that evidence, your Honor?

MR. ANDERSON: I would object to that. You do not know of your own knowledge the cost of machinery, do you?

THE WITNESS: Yes, I do. I personally purchased some.

MR. ANDERSON: You personally caused to be purchased some of the machinery?

THE WITNESS: Yes.

MR. ANDERSON: Have you kept the accounts of the company at all?

THE WITNESS: No.

THE COURT: What was that you asked?

MR. ANDERSON: Whether he kept the accounts of the company. He has talked about overhead and things like that, and yet it is perfectly obvious that he can not testify about this.

THE COURT: You may ask him for such figures as he knows of his own knowledge. He may not use the memoranda here, because you have not shown that he knows that to be correct. It is not a suitable memorandum to be introduced in evidence over objection; it is not shown to be such a memorandum as may be used to refresh the recollection of a witness. The specific objection is sustained.

Q. 76. Doctor, will you state the cost of such elements as entered into the research work in which you participated, which you know of your own knowledge?

A. I can not separate the individual items very well at present, because I have not each individual item here before me. However, I did figure those out before I came here and added them up and put them in a lump sum.

MR. ANDERSON: From what source did you figure them out, from the books?

THE WITNESS: I knew the salaries.

MR ANDERSON: You took the books?

THE WITNESS: Yes.

MR. ANDERSON: You did not keep the books, did you?

THE WITNESS: No, I never keep the books.

Q. 77. You say you knew the salaries?

A. I knew the salaries.

Q. 78. Did you say you knew the cost of the machinery?

A. I knew the cost of the machinery. I purchased some of it myself.

Q. 79. What other elements entered into the cost that you knew about?

A. The overhead. That was, however, the most indefinite part as far as my personal knowledge is concerned, and that was what I got by reference to the books of the Abbott Laboratories.

Q. 80. Omit the overhead. What other elements besides the cost of machinery and the salaries entered into the total of the cost of research?

A. The cost of the materials which were usually wasted during the preliminary work.

Q. 81. Did you know of your own knowledge the cost of those materials?

A. Yes.

Q. 82. Was there any other element?

A. None that I can think of now.

Q. 83. Omitting, therefore, the item of overhead, will you please tell us the cost of the research work that was pursued as you have described?

A. About $35,000.

Q. 84. You have stated that the Abbott Laboratories manufactured and sold under this Adams and Kamm process novocain or procain. I want to ask you whether they were selling that product in 1919.

A. Yes.

Q. 85. Did you fix the date when they started selling it?

A. It was early in 1918, but I can not give the exact date.

Q. 86. In the months of February, March and April, 1919, were there any other manufacturers in the United States manufacturing novocain or procain?

A. There were.

Q. 87. Who were they?

A. The Rector Chemical Company, H. A. Metz Laboratories. I think that is all, although possibly there may have been another one.

Q. 88. Doctor, based upon your general knowledge of drugs and their manufacture, your knowledge of the patent on novocain, the number of which I have given you, the experience in attempting to produce under it that you have described, the lack of intermediates necessary for the manufacture of the product that you have described, and the fact that the patent had only four years to run, which is in evidence; the fact that the Abbott Laboratories were then producing the product novocain by a new method not described in or covered by this patent the number of which I have given you; the fact that three Federal Trade Commission licenses were outstanding under which other manufacturers were producing the product—what in your opinion was the fair value of patent No. 812,554 in the United States in February, March and April, 1919?

MR. ANDERSON: We object, if your Honor please, first because the witness has not been shown to be an expert on the value of patents, and, second, because the question does not correctly state the testimony.

MR. KRESEL: Will Colonel Anderson please point out in what respects the question does not correctly state the witness's testimony?

MR. ANDERSON: To point to one thing, the witness says that Mr. Metz, so far as he knows, was the only other manufacturer of novocain.

MR. HERSCHKOPF: No, he said directly the opposite. He said also the Rector Company, and said possibly there was a third one.

MR. KRESEL: He gave two of the names. I do not recall the other.

THE WITNESS: The Rector Chemical Company.

MR. KRESEL: And he said there might be another. Is there any other respect in which I have not stated the testimony?

MR. ANDERSON: I can not recall at the moment, because I can not carry all of those things in my head.

THE COURT: What is your first ground of objection?

MR. ANDERSON: That the witness has not been qualified as an expert on patents at all. He is a chemist, a technical laboratory chemist, and the value of patents would include a knowledge of commercial value and various other elements enter into patent value. I do not think he is qualified to state an opinion as to the value of patents.

MR. KRESEL: I do not think I ought to argue that proposition. I think it is directly in line with the kind of evidence that we have had on the plaintiff's case.

MR. ANDERSON: We have experts who have dealt with them, have manufactured them for many years, dealt in those very things, buying them and selling them.

THE COURT: Is there such a thing as an expert on the value of a patent?

MR. KRESEL: I do not believe there is.

MR. ANDERSON: I am not myself an expert on patents, if your Honor please, as no doubt your Honor has observed—either in patents or patent law. I do not know anything more about it than about criminal law, and I do not pretend to know anything about either. But I will say this: I know enough about it to have a very strong conviction that this gentleman is not competent to testify to the value of patents, that he can speak of chemi-

cal matters but not on the value of patents. Therefore, I believe the objection is well taken.

THE COURT: My question has not yet been answered, Colonel Anderson, and that is whether there is any person who is an expert on their value.

MR. ANDERSON: Yes, F. N. Waterman of New York, whom I have known, is an expert, and others of the same class, who I would say were experts on the value of patents in the market and their sale, because they have done nothing else all their lives but sell and value patents. There are certain patent lawyers in the United States making transfers of patents, selling and dealing in patents, who are experts to speak on their value, knowing the character of the patent and having the technical knowledge necessary in connection with it. But a chemist is not a person, in my judgment—with all the ability that I admit Dr. Volwiler to possess—who can speak on that subject. It takes a commercial knowledge and a knowledge of business, aside from a technical knowledge of chemistry.

MR. KRESEL: As to the gentleman whose name has been mentioned—Mr. Waterman—I do not think that I have a personal acquaintance with him, but I know him by reputation and I understand him to be an expert on patents, but not an expert as to the value of patents.

THE COURT: It was with respect to value that my inquiry was addressed. Without basing it on any principle, or with respect to the value of patents, I should think that this witness's estimate or appraisement of a patent under those circumstances would be of value. I will take the answer.

A. Under the circumstances and conditions which

you have enumerated, I should say that the patent would be of purely nominal or speculative value. It would be almost impossible to give a real value in dollars and cents to such a patent.

Q. 89. Doctor, based upon your general knowledge of drugs and their manufacture, your knowledge of the patent on novocain which you have before you and of which I gave you the number, the experience in attempting to produce under it that you have described, the lack of intermediates necessary for the manufacture of the product according to the specifications in the patent, the fact that the patent had only four years to run, the fact that the Abbott Laboratories were then producing the product novocain by a new method not described in or covered by the patent, the fact that three Federal Trade Commission licenses were outstanding under which others were manufacturing the product—what in your opinion was the patent worth to a purchaser who, by the terms of the sale to him, would be obligated to give to the United States a free license to manufacture said product or have it manufactured for his own use, who would be obligated to issue non-exclusive licenses under said patent to any qualified American citizen, would be obligated to defend the patents, and never to have any more than six per cent. return on his investbent?

MR. ANDERSON: I object to the question for the reasons stated. I object for the further reason that the value under those conditions is immaterial in this case; for the further reason that the question does not correctly state the conditions disclosed by the evidence; for the further reason that the evidence does not disclose that the process employed by the Abbott Laboratories is a new process.

THE COURT: Is what?

MR. ANDERSON: Is a new process or a different process.

THE WITNESS: It would have to be a new process or it could not be patented in this country.

MR. ANDERSON: There are plenty of patents in the United States which are issued and yet are infringements of existing patents.

THE COURT: But, Colonel Anderson, the issuance of a patent is prima facie evidence of its validity, is it not?

MR. ANDERSON: I think so, sir.

THE COURT: So would not that objection fall? If you mean that that patent has not been introduced in evidence here, I think that should be stated; because if you want a certified copy of the patent put in here before this question is answered, I think your objection is probably well taken. But I did not understand it was based on that ground.

MR. ANDERSON: I did not base it on that, because as a matter of fact, if you please, I thought the patent had been produced. There have been so many produced here that I thought it had been produced, but I had overlooked that fact and now I recall the patent has not been produced. As I want to examine the witness, I shall further object on the ground that the patent has not been produced, and I move also to strike out the preceding question and the answer to it on the same ground.

THE COURT: That objection was not made at that time, and I shall not strike out the preceding question on that ground.

MR. ANDERSON: I think, if your Honor please, I can move at any time while the witness is upon the stand to strike out any question and answer, that I am not precluded by the fact that the question has been answered. Of course, if the case is closed, I am then too late. But at any time while

it is open, while the witness is on the stand, I can make a specific motion to strike out the question and answer. Also I move to strike out the question just asked on the ground that the patent has not been produced which he claims to constitute a patent of nominal value, in addition to the grounds stated.

MR. KRESEL: Colonel Anderson, if I promise to produce a certified copy of that patent and put it in here before you cross-examine, will that satisfy you?

MR. ANDERSON: On that point, yes, sir.

MR. KRESEL: May the question then be answered, upon my promise that I will produce a certified copy of the patent prior to cross-examination of this witness by counsel?

THE COURT: Yes.

MR. KRESEL: Will you answer, please?

MR. ANDERSON: Your Honor, to make it perfectly clear, you will understand I am making the objection in addition to the reasons stated, on the ground that this does not state the measure of value in this case.

THE COURT: That is under your contention. I understand that.

MR. ANDERSON: Yes, sir.

THE COURT: I have allowed you to put in all evidence that you thought was material in support of any view the plaintiff had in the case, and of course I have got to allow the defendant to do the same thing.

Q. 90. Will you answer the question, please, Doctor?

A. The patent would be worthless. I would consider it a liability rather than an asset, and it was so considered by our company.

MR. ANDERSON: What was considered by his

company is not responsive to the question and, in the next place, what his company considered is a matter to be proved by some one else, I think.

MR. KRESEL: Your Honor will recall that Mr. Metz was permitted to testify what he would have given for these patents.

MR. ANDERSON: Undoubtedly, but Mr. Metz was the company. Mr. Metz was the man that paid the money.

MR. KRESEL: This witness is just as able to state what his company would have been willing to do.

MR. ANDERSON: I do not think so. He is not even an official of the company. He is merely a chemist. And in saying that, I do not wish to reflect upon this witness in any way.

THE COURT: I am not concerned with what his company would have done. I am concerned with what this witness's viewpoint is. The portion of the answer objected to by Colonel Anderson is stricken out.

MR. KRESEL: That is the portion which said what?

THE COURT: "And my company so considered it" I think were the words.

Q. 91. Dr. Volwiler, is there such a product, such a drug, as is called butyn?

A. Butyn, yes.

Q. 92. How is that spelled?

A. B-u-t-y-n.

Q. 93. What is the nature of that drug?

A. It is a local anesthetic that is used in a similar manner to novocain or procain.

Q. 94. Is there another product and drug known as apothesine?

A. There is.

Q. 95. What is the nature of that drug?

A. It is also a product used for the same purposes as procain.

Q. 96. Who manufactured and sold it?

A. Parke, Davis & Company of Detroit.

Q. 97. And was it on the market and being sold in February, March and April, 1919?

A. It was.

Q. 98. You stated that the Abbott Laboratories bought the Dermatological Laboratory. When was that done?

A. November, 1922.

Q. 99. What is the business of the Dermatological Laboratory?

A. The main line of business is the manufacture of arsphenamines, that is, salvarsans.

Q. 100. And to your knowledge, for how long a period prior to November, 1922, had the Dermatological Laboratory been in that business?

A. Since about 1915; some time in 1915.

Q. 101. In February, March and April, 1919, were there other manufacturers of salvarsan and neo-salvarsan in the United States; I mean other than the Dermatological Laboratory?

A. There were.

Q. 102. Will you name them?

A. H. A. Metz Laboratories; Takamine—I think that is laboratories—Takamine, anyway;—and Company Laboratories; and the Diarsenol Company.

Q. 103. Where was the Diarsenol Company located?

A. Buffalo.

Q. 104. And Takamine?

A. Somewhere in New Jersey, I think.

Q. 105. And Metz?

A. Brooklyn.

Q. 106. And the Dermatological?

A. Philadelphia.

Q. 107. Did the Abbott Laboratories manufacture salvarsan or neosalvarsan during 1918 and 1919?

A. They did not.

Q. 108. Are you familiar with the specifications contained in what we call here in the case the salvarsan patent No. 986,148?

A. I am.

Q. 109. And with the specifications in the neosalvarsan patent which, by its reissue number, is known as 13,848?

A. I am.

Q. 110. Do you know whether the Dermatological Institute was producing salvarsan according to the specifications of those two patents?

MR. ANDERSON: I object. It does not appear, in the first place, that he was connected with the Dermatological Institute; and in the second place, it calls for a conclusion as to whether they were producing in accordance with the specifications of those patents.

THE COURT: The question is whether he knows. He either does or does not know.

MR. ANDERSON: Of course, if he says that he knows or does not know——

MR. KRESEL: That is the question.

THE COURT: That is where he stops with this question.

MR. KRESEL: That is all I am asking him.

A. I do.

Q. 111. Will you state whether, to your knowledge, the Dermatological Institute was or was not producing salvarsan or neosalvarsan according to the specifications contained in those patents?

A. Of course not.

MR. ANDERSON: I object.

MR. KRESEL: I consent that the answer be

stricken out so that the Colonel may raise his objection.

MR. ANDERSON: If your Honor please, it appears that this gentleman was for the years 1916 to 1918 engaged in the University of Illinois——

THE COURT: You may cross-examine him now as to how he knows, before he answers, if you want to.

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 112. Where were you engaged in 1916 and 1918?

A. In the University of Illinois.

XQ. 113. Your entire time was there?

A. Yes, sir.

XQ. 114. As Professor of chemistry?

A. As instructor of chemistry.

XQ. 115. As instructor of chemistry?

A. Yes, sir.

XQ. 116. Where were you engaged in the year 1919?

A. With the Abbott Laboratories.

XQ. 117. When did you go to the Abbott Laboratories?

A. In the spring of 1918.

XQ. 118. And from that time on to the present you were engaged with the Abbott Laboratories?

A. I was.

XQ. 119. The Abbott Laboratories, I think you said, are located in Chicago?

A. Yes, sir.

XQ. 120. In 1918 and 1919, you were engaged there at all times in the business of that company, were you?

A. I was.

MR. ANDERSON: Now I wish to object to the

question. It has been testified here that the Dermatological Laboratories are located in Philadelphia.

XQ. 121. Have you ever worked in the Dermatological Laboratories yourself?

A. I have not.

MR. ANDERSON: And that the Dermatological Laboratories were not producing salvarsan and that is the only question involved. Furthermore, that the question calls for a conclusion.

MR. KRESEL: May I ask the witness a few questions?

MR. ANDERSON: All right, sir.

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 122. You have stated, Doctor, that you knew whether the Dermatological Laboratories manufactured salvarsan and neosalvarsan under the specifications of those patents?

A. I did.

Q. 123. Will you state how you knew that? I do not ask you to state the fact, you understand, whether they did or not; simply to give us the information.

THE COURT: On what do you base your previous answer that you did know whatever you said you knew?

A. I have gone over the records. Previous to the purchase, I had a good idea, a general idea of the method followed, by contact with the men who were doing the work there. After the purchase, I went over the records. The methods were submitted to me and placed in my possession and are in my files. I have spent periods of time on a number of occasions at Philadelphia going over their plant and their methods and talking to Drs. Schamberg, Kolner and Raiziss, who are the men who did the work.

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 124. Did you make up any of these records yourself that were submitted to you?

A. No. They were made up for me by these three men.

MR. ANDERSON: All of that is pure hearsay, of course.

MR. KRESEL: Not at all, your Honor. An expert is always permitted to give his opinion not only upon his personal knowledge but upon information, upon literature that he reads, upon records that he reads. This witness has stated that on several occasions he personally went to the Philadelphia laboratory and was in touch with the men. I do not know whether he said he observed. I do not want to put it in his mouth.

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 125. Did you observe the manufacture?

A. I did.

MR. ANDERSON: Your Honor please, the witness has said that he based his knowledge upon records none of which he made up. I could go there tomorrow and make up a record in any way I saw fit. The stuff may have been made in accordance with the record or not made in accordance with the record. The record may have been made up after the stuff was made up or sold. All that the witness knows is what somebody else wrote, or said. He said he talked to these gentlemen as to what they were doing. They are available, I suppose. They knew what they were doing. They can come here and tell. What they told him and the conclusions he drew are not evidence.

As to observing it, in the first place, he did not say when he was there or how long he was there or what he observed. He might have observed the essential process or not. Therefore I submit that he cannot testify to what the Dermatological Institute was doing when he was not there and was not engaged in that service but was engaged in the service in Chicago.

MR. KRESEL: May I ask the witness another question?

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 126. Doctor, please state, if you will, when you went personally to the Dermatological Institute laboratories and state if you will just what you observed.

A. My first visit there was from about the 1st of January on for a period covering about a week.

Q. 127. What year?

A. Of 1923. All my time during the day was spent at the Dermatological Research Laboratories and at that time I was almost continually watching the operation of the plant from beginning to end. My second visit was for several days within the last month and on that occasion some of the additional points which had arisen in my mind that I did not have perfectly clear were cleared up at that time.

Q. 128. From such a study of the records as you speak of that you made, can you or can you not state whether the process followed by the Dermatological Institute that you have observed in the production of salvarsan and neosalvarsan is the process described in those records?

MR. ANDERSON: I object on the ground, of course, that it is pure hearsay. It does not necessarily follow that they followed the process outlined in their records. And in the third place, the

witness is asked to state a conclusion as to whether the process is in conformity with the terms of a patent, which calls for not only his conclusion but as to the construction of the patent, all of which can only be shown by the person who does the work or is familiar with the actual steps taken under the patent.

THE COURT: Let me see, Colonel Anderson. What is your evidence of value in this case? I was trying to recall it. And what do you contend that that evidence shows?

MR. ANDERSON: If your Honor please, if I undertook to state all the evidence of value in this case, it would take quite a long time. The evidence of value here, and in my judgment the most valuable evidence of value, and in fact the only evidence of value that really has anything to do with it and that is conclusive at all—other evidence as to value may be helpful—but the evidence that is to my mind, not necessarily to your Honor's mind, the strongest is what these patents were earning——

THE COURT: Earning when?

MR. ANDERSON: What they were earning at the time and are earning today. They are both elements. What they are earning today is not necessarily conclusive, but that is one of the elements; because in the hands of the Chemical Foundation what they are earning is not at all conclusive under the circumstances because they have conditions which in my judgment would destroy the value to some extent. The opinon of witnesses who are familiar with values of property of that kind from actual experience and any other circumstances which go to show the use, the extent of the use, the nature of the product, the market for the product, the profits of the business, the amount of pro-

duction; any of those elements combined will make a basis on which the Court or any other body must arrive at a fair value, when they are combined.

THE COURT: If you want to make further objection, all right, but my inquiry did not ask for further argument.

MR. ANDERSON: Your Honor asked me what the elements of value were. I would say that if we get to the question of value, which I hope we never will because in my judgment it has not much to do with this case—if we do get to the question of the value of these patents, it is a thing that is going to require the most exhaustive and careful analysis of this record of anything in it; and every fact in it will be considered.

THE COURT: Then your answer to my inquiry as to what your evidence of value consists of, is every fact embodied in the record.

MR. ANDERSON: That shows the use, extent of use, possible use of the product of any of those conditions.

THE COURT: Upon how many of these patents does your testimony place a value?

MR. ANDERSON: Oh, I think the evidence in the case places a value on all those that have been licensed and a special value on the salvarsan, neosalvarsan and novocain patents and the nitrogen patents and the dye patents and upon the group of dye patents. We have the admissions of these people that they were of great value. We do not have to prove actual value. We are not selling these things. If we prove that they reasonably can be assumed to have a value greater than that paid for them, the sale should be set aside.

THE COURT: That is just the evidence I would like to have you point out to me.

MR. ANDERSON: If your Honor please, I want to respond to your Honor's request in every way that I can, but unless you desire it, I do not want to review this record, because in the first place my mind has not been on that subject and it would be a very laborious task on my part to point out to you what I think this record shows on value. I do not think I could really do it because I would have to go into phases of it that will require a most careful study and analysis of the actual value.

It is, if we come to the argument of that question, and I suppose we will, far and away the most difficult question to consider in this case and will require a most careful analysis of the evidence in my judgment.

I have indicated generally the character of what I regard as evidence of value. I have had a great deal to do with condemnation of railroad property in my life and this is the most difficult problem I know of in arriving at the value of property. I know of nothing to equal it.

THE COURT: According to the best information I have, arriving at the value of railroads is a child's problem compared to an expert's problem with respect to a patent.

MR. ANDERSON: I quite agree with you, sir; and this problem is one of extreme difficulty.

THE COURT: But I was wondering whether you have any value or have shown any value as to some of the patents. You did place an estimate of value on the salvarsan and neosalvarsan and novocain patents; but I do not recall that you showed that they were worked even now in this country. Did you?

MR. ANDERSON: I only undertook to estimate their value by, as I recall, one witness—I do not recall the evidence—as to his opinion of their pres-

ent value in this country or their value at the time of their sale in this country, subject to the conditions of sale and surrounding circumstances. But I may state to your Honor quite frankly now, as I have been trying to do in this case, that in my judgment the evidence of the officers of this corporation which has been read in here, and taken on the witness stand, is conclusive, that the value of this property was far in excess of the price taken, its fair value, and taking that to be true, it is immaterial whether it is ten million dollars more or a hundred thousand dollars more.

THE COURT: I will assume this, and I haven't any idea whether it is true or not: I have sat in one German patent case only, so far as I know, and that one patent had an element omitted which made that patent absolutely valueless, and it was so held by the Court of Appeals of this Circuit. Now, I know nothing about any other. I am not drawing any inferences from that fact, but I am going to use it as an illustration to ask a question:

Suppose that Mr. Choate did make a statement before a committee or sub-committee of the House of Representatives or of the Senate, in which he said that those patents had a substantial value if sold under monopolistic conditions. I do not know whether there has been any such statement of fact or not. Then suppose this witness should be able to state that what was true with respect to the patent that I referred to in the Court of Appeals was true of the patents with respect to salvarsan or neosalvarsan (I have no notion whether he will or not) would not that testimony be relevant?

MR. ANDERSON: It might be relevant if it were properly proved. I could not answer your Hon-

or's question right off, because it is a very nice question. I am objecting to this evidence on the ground that the question in form is illegal and that the witness is not competent to testify, because it appears on the face of the record he was not there. I am not raising the question of what evidence is competent here, and I am frank to say to you that my knowledge of the patent law, as I have said so often here, is so limited that I would not undertake to state to your Honor what is competent. I am going to put into this case all the facts I can bearing upon the question of value, in addition to the admissions of the parties, and then I will argue the value of that testimony when I come to it.

THE COURT: And Mr. Kresel may do likewise?

MR. ANDERSON: He may if he can put it in by legal evidence; but if your Honor will recall, I was required here to reframe question after question, and a good many were stricken out, because I asked questions which called for a conclusion. This question calls for a conclusion. The question was raised and some of the evidence was stricken out. I did not renew the question, because it did not appear that the matter was within the knowledge of the witness. Now, if this evidence were absolutely legal evidence, if there were no ground for objection to it in the world, this question to this witness would be an illegal quesion under any rule of evidence, in my judgment.

MR. KRESEL: Will your Honor permit me to recall that the testimony with reference to the value of the particular patents that this witness is testifying about came from Mr. Metz. Mr. Metz testified that he was not a chemist. Mr. Metz did not follow out the processes of the patent.

Mr. Metz did not testify even that he had ever read the salvarsan patent. Mr. Metz was not compelled to read to your Honor here the specifications of that patent. Mr. Metz did not say that he knew anything about the way to make salvarsan, but said that he sent his brother abroad to find out; and yet there wasn't any objection on the part of the defendant, nor any ruling by your Honor, which prevented Mr. Metz from giving his testimony as to what, in his opinion, the patent was worth.

MR. ANDERSON: My view was that Mr. Metz was a competent witness to express an opinion. I do not think that this witness can express an opinion as to what the Abbott Laboratories were doing when he was in Chicago under a patent, when that opinion is purely a matter of conclusion. However, I do not wish to argue the question at any length. I have stated my objections.

MR. KRESEL: May I have the question read, your Honor?

THE COURT: Yes.

(Q. 128 repeated as above recorded.)

A. I can.

Q. 129. Will you state?

MR. ANDERSON: Same objection.

THE COURT: Overruled.

A. It is not the process.

Q. 130. Have the Abbott Laboratories since purchasing the plant of the Dermatological Institute been manufacturing salvarsan and neosalvarsan?

A. At Philadelphia, not at Chicago.

THE COURT: "Yes" or "No" is your answer to that question.

THE WITNESS: Yes.

Q. 131. Where?

A. At Philadelphia.

Q. 132. Do you know whether the manufacturing of salvarsan and neosalvarsan by the Abbott Laboratories is in accordance with the specifications of the salvarsan and neosalvarsan patents that you have described?

MR. ANDERSON: Same objection as above.

THE COURT: Overruled.

Q. 132. (Continued.) Just say yes or no whether you know.

A. Yes.

Q. 133. Will you state now whether the Abbott Laboratories is making salvarsan and neosalvarsan according to the specifications in those patents or no?

MR. ANDERSON: Same objection as above.

THE COURT: This is an expert. Objection overruled.

THE WITNESS: Will you read that question?

(Q. 133 repeated as above recorded.)

A. No.

Q. 134. Do you know whether it is possible to make salvarsan according to the specifications contained in those two patents?

MR. ANDERSON: I object on the grounds stated, and on the further ground that the witness may testify as to what he can do, but he cannot testify as to what it is possible for any one else to do.

THE COURT: Do you mean to contend that he is not a man skilled in the art?

MR. ANDERSON: I mean to say that it does not appear that he has ever made an ounce of salvarsan in his life, or that he has ever followed a line of a single one of these patents, or that he has ever undertaken to carry out the process of one of these patents, and therefore he cannot state what it is possible for somebody else to do in engaging in that business.

THE COURT: Objection overruled.

MR. ANDERSON: Exception in each case.

A. No.

MR. KRESEL: Will you read the question and answer?

(Q. 134 and answer repeated as follows: "Do you know whether it is possible to make salvarsan according to the specifications contained in those two patents? A. No.")

THE WITNESS: I should have said I do know.

Q. 135. And is it possible or can the product be produced with the information that is contained in the patent?

MR. ANDERSON: Same objection.

THE COURT: Objection overruled.

A. No.

Q. 136. Doctor, based upon your general knowledge of drugs and their manufacture, your knowledge of the salvarsan and neosalvarsan patents which you state you have studied and examined, your experience in manufacturing the product, the lack of information as to how to manufacture it under the patent, the fact that four manufacturers were then supplying the product to the country under Federal Trade Commission licenses, that an American citizen then claimed to have a pre-war exclusive license from the German owners of the patent to manufacture the product in the United States, which I wish you would assume, during the life of the patent, the fact that a citizen of the United States then claimed to have a pre-war agreement with the German owners of the patents for the transfer of the patents to said American citizen, what, in your opinion, was the fair value of these two patents the salvarsan and neosalvarsan in the United States in February, March and April, 1919?

MR. ANDERSON: Objection for the same reasons as stated to the preceding hypothetical question, and for the further reason that it appears

of record that this witness has never undertaken to manufacture under those patents and never followed their processes, and it does not include all the elements contained in the record on this subject.

THE COURT: You may take the answer.

A. It would be exceedingly speculative or nominal.

By THE COURT:

Q. 137. What do you mean by that? You gave that answer to the novocain patent, and I do not know what it means.

A. I mean by that that in the first place it is a very hard matter to fix a value of dollars and cents. In the second place, I am speaking from my information in connection with an industrial and manufacturing concern. By "speculative" I mean that it is questionable whether a fairly conservative industrial concern would care to own the patents with all those conditions attached—or to pay a price for them with all those conditions attached. They would just as apt to be a liability as an asset.

By MR. KRESEL:

Q. 138. Doctor, based upon your general knowledge of drugs and their manufacture, your knowledge of the salvarsan and neosalvarsan patents, your experience in manufacturing the product, the lack of information as to how to manufacture under the patent, the fact that four manufacturers were then supplying the product to the country under Federal Trade Commission licenses, the fact that an American citizen then claimed to have a pre-war exclusive license from the German owners of the patent to manufacture the product in the United States during the life of the patents, the fact that the citizen of the United States then claimed to have a pre-war agreement with the German owners of the patents for the transfer thereof to said American citizen, what, in your opinion, was the pat-

ent worth to a purchaser who, by the terms of the sale to him, would be obligated to give to the United States a free license to manufacture said product or have it manufactured for its own use, would be obligated to issue non-exclusive licenses under said patents to any qualified American citizen, would be obligated to defend the patents and never to have any more than six per cent. return on his investment?

MR. ANDERSON: Objection for the same reasons as stated to the previous hypothetical questions, and each of them, and especially to the question next preceding.

THE COURT: You may take the answer.

A. I would consider it more a liability than an asset.

Q. 139. Would you say it was worth anything?

A. No, it would be worthless.

Q. 140. I show you this copy of a patent, and ask you now to state whether that is a copy of the Adams and Kamm patent that you testified about a little while ago?

A. It is.

MR. KRESEL: I now offer it in evidence.

THE COURT: Does that come under your stipulation?

MR. ANDERSON: Yes, I have no objection to the copy.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibits No. 151." *(See Patent Exhibit Book)*

Q. 141. In addition to the novocain, salvarsan and neosalvarsan, did you examine a patent for the production of a drug called cinchophen?

A. I did.

Q. 142. What is that drug used for?

A. For gout and rheumatism.

Q. 143. And was that one of the patents that is described in this booklet isued by the Chemical Foundation that you have pointed out here?

A. It is.

MR. KRESEL: Just for the record I will give the number of the patent. It is No. 1,075,171.

Q. 143. Did you examine that patent and the specifications attached thereto?

A. I did.

Q. 144. Did the Abbott Laboratories undertake to produce the product following the specifications of that patent?

A. It did.

MR. ANDERSON: One moment; objection on the ground that that is a clear conclusion.

THE COURT: This is an expert.

MR. ANDERSON: Do I understand your Honor rules (I am just asking the question; I did not so understand) that an expert can testify without taking the patent and saying what he did to manufacture following the patent? I would like to know, because that will affect my——

THE COURT: You may cross-examine him as to those facts, if you want to. You may do it now.

MR. ANDERSON: No, sir. What I mean is this: I am making these objections on the ground that it is a conclusion that a man followed a certain process under a certain patent, without producing the patent——

MR. KRESEL: The patent is in evidence, your Honor.

MR. ANDERSON: ——without following the specifications named in the patent. I do not want to argue against your Honor's ruling; but I want to get clear in my mind whether that was the ruling, because it will affect the evidence that I am going to produce in rebuttal.

THE COURT: What was your remark, Mr. Kresel?

MR. KRESEL: I was saying, sir, that the patent was in evidence. Colonel Anderson was calling attention to the fact that the witness had not the patent before him. Now, I was saying that it was in evidence.

Q. 145. At all events, you have studied it?

A. I have.

Q. 146. Did you personally undertake to make this stuff according to the patent?

A. I did.

Q. 147. Did you undertake to follow and did you follow the steps that were described in the patent?

A. I did.

MR. ANDERSON: One moment; I object on the ground that that is a clear conclusion, a construction of the patent.

THE COURT: Do you mean to say that the specification of the patent is not clear, then, to a person skilled in the art? because that is the only thing that I can derive from that objection; and if that is true, the defendant need not go any further, because if a person skilled in the pharmaceutical and chemical art, as this man is, cannot say as a fact that he followed the specifications of the patent, if the specifications of the patent are so abstruse that it is impossible for a man to say whether he followed them or not, then it seems to me you are putting me in the position of saying, in the alternative, that the patent is not sufficiently clear to enable one skilled in the art to determine what it means.

MR. ANDERSON: No; I am objecting, following what I understood to be your Honor's ruling. That is the reason I asked what was the ruling. I am not an authority on this subject, if I am on any

subject—I do not know that I am—but I do know this, that if, as I understood your Honor's ruling, the question was objected to, the conclusion could not be stated even by an expert, for he must say what he did under the patent and let the Court decide whether the patent means that and whether that applies. Then that would be the evidence in the case. But if the witness can get on the stand without producing the patent at all, without looking at it, and say he followed the process in a certain patent, why, then you would never have to use a patent at all, because he could say, "I read the patent; it is number so-and-so; and I followed the process."

THE COURT: I do not understand you. Have I made a ruling to that effect, Colonel Anderson?

MR. ANDERSON: In the case of Mr. Parmele was the instance I referred to. Mr. Parmele said that he had followed one of these processes, whatever the name of it was, and that he had owned the patent, and so on, and we had to send Mr. Parmele back to get the patent and then go back on the stand and say that he had it.

MR. KRESEL: On the contrary, you are mistaken about it. I permitted Mr. Parmele to testify without the production of the patent.

THE COURT: Just a minute on both sides. Will you turn to the record?

MR. ANDERSON: I cannot, your Honor; it will take me an hour.

THE COURT: We will adjourn the Court until 8.30 Tuesday morning.

(Whereupon, at 3.00 o'clock P. M. Standard time, an adjournment was taken until Tuesday, July 10, 1923, at 8.30 o'clock A. M. Standard Time.)

TWENTY-THIRD DAY.

Wilmington, Delaware,
July 10, 1923, at 8.30 o'clock a. m.
Standard Time

Before:

HON. HUGH M. MORRIS, U. S. District Judge.

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

THE COURT: Did either of you find your contentions supported, or is there a disagreement between you? Have you conferred as to what the record does disclose?

MR. ANDERSON: I have not seen Mr. Kresel, your Honor, until just a minute ago. At the time of adjournment last Friday, as your Honor will recall, I had asked if I understood correctly the ruling of the Court, suggested that I wanted to get the ruling clear in order that I might not possibly be objecting against the ruling of the Court. Your Honor asked me to call attention to some ruling along that line. I thought there was such a ruling in the Parmele testimony.

I have not been through it; I was called to Washington on another matter and have not had a chance to read the testimony at all myself; but the ruling which I had in mind at the time—whether it covers the point I really cannot say—was on page 1539. I had asked Mr. Parmele:

"Were you operating your business under that patent from 1911 down to the spring of 1919?

"A. I was.

"MR. KRESEL: One minute. To that we object upon the ground that it calls for the witness's conclusion as to whether he was using this patent or was not using this patent, and further upon the ground that it is immaterial and irrelevant.

"MR. ANDERSON: Very good.

"Q. 15. I will ask you this question: Did you use these patents in your business from the time of its assignment to you down to June 1919?

"MR. KRESEL: I raise the same objection as I raised to the preceding question.

"MR. ANDERSON: I do not want to argue, sir.

"THE COURT: I think the objection is well taken. You may take the answer of record."

I said, "Just answer the question." And he answered:

"From May 11th, 1911, down to the present time and up to now."

Then the same question practically about the trade-mark, and practically the same objections. Then we come to page 1562. After he had stated that he had been in this business for thirty years and had manufactured this product since 1911, I asked:

"Q. 64. What in your opinion would have been the fair value of this patent and the accompanying trademark at the time that they were attempted to be seized and assigned to the Chemical Foundation?

"MR. KRESEL: We object to that upon the ground that the witness has not been qualified as an expert to give any testimony upon value; that no proper foundation has been laid for the admissibility of such testimony;" and so forth.

I hope your Honor will understand that in referring to the former rulings, my knowledge being very limited on this subject, I desired to get clearly what the position of the Court was.

THE COURT: I understand perfectly.

MR. ANDERSON: Whatever the position of the Court is in this case, I am going to try not to work against it—reserving, of course, my position on the record.

THE COURT: It is very difficult for me to remember all the rulings made in the case. I desire the rulings to be consistent, but can only make them so on specific objections.

MR. ANDERSON: This was the thought I had in my mind. I had gotten the idea that your Honor's position was and that the law was—I assumed they were the same for this purpose—that in proof of the use of a patent all that the testimony could be would be the actual steps taken under the patent, taken in connection with the language of the patent, and the Court, applying those, would reach a conclusion as to whether it was within the patent or not within the patent. I wanted to get it clear in my mind, no doubt because of my ignorance of the subject. I was trying to get that ruling clear.

THE COURT: I will hear Mr. Kresel before I make a statement.

MR. KRESEL: I had rather understood your Honor that the point was whether we could go on and examine Dr. Volwiler without putting the patent in evidence. I come to that conclusion from the last statement made by Colonel Anderson at page 3288. When your Honor asked Colonel Anderson whether you had made a ruling to the effect that Colonel Anderson was contending for, Colonel Anderson said: "In the case of Mr. Parmele was the instance I referred to. Mr. Parmele said that he had followed one of these processes, whatever the name of it was, and that he had

owned the patent, and so on, and we had to send Mr. Parmele back to get the patent and then go back on the stand and say that he had it."

It is at that point that I disagree with Colonel Anderson. My recollection was that when Mr. Parmele went on the witness stand he did not have his patent with him, nor any of the agreements that referred to the patent, and I had a recollection that I withdrew any objection to his testimony upon that ground, and that Colonel Anderson went ahead and examined him upon the theory that the papers were in court, and several days thereafter they were produced.

That was my recollection and I have since looked at the record and my recollection is borne out in that respect. It seemed to me that that was the only question that was up on Friday as we were adjourning. I did not understand that Colonel Anderson was contending that there had been some ruling by your Honor that the expert is confined to a statement of the steps that he has taken and that then it is for the Court to say whether those steps were pursuant to the specifications in the patent.

Not only did I not understand your Honor so to rule, but I should want to argue against such a ruling. It seems to me that a patent speaks to the man versed in the art and that the Court cannot be asked to determine the meaning of the specifications and to interpret the acts taken by the man versed in the art and then come to the conclusion whether the steps taken conform to the specifications. I think that is a matter purely of expert knowledge and that the man versed in the art should be permitted to state to the Court that what he did was in accordance with the speci-

fications. I do not know whether that question is directly up for ruling at the present time.

THE COURT: You may present a new question. I am not very well satisfied with one or two rulings made on Friday—I have not the record before me and therefore cannot indicate them—but if you will cover the ground again, I will then make a definite ruling.

MR. ANDERSON: We were all very tired.

THE COURT: We need not be bound by any rulings that were made on Friday afternoon. I do not recall specifically what they were. We will start afresh with respect to those rulings.

MR. ANDERSON: May it please the Court, I would like to present to the Court Mr. H. E. Knight, head of the Patent Department of the Department of Justice. I asked Mr. Knight to come up because I felt your Honor was really handicapped by my ignorance of the Patent Law and while this matter is up, I thought it would be advisable to confer with Mr. Knight.

THE COURT: Very glad to have you Mr. Knight.

ERNEST H. VOLWILER, resumed the witness stand.

DIRECT EXAMINATION (Continued).

By MR. KRESEL:

Q. 148. Dr. Volwiler, when we adjourned on Friday, I was questioning you about your experience with the patent covering cinchophen. Have you that patent before you?

A. I have only a copy of it.

Q. 149. Well, that will do. Will you produce it?

A. (Witness produces a copy of patent.)

MR. KRESEL: We have a printed copy somewhere, but subject to correction, we will use that.

I offer this patent in evidence so that the witness may testify about it.

THE COURT: Let it be marked.

Received in evidence and marked "Defendant's Exhibit No. 152." (*See Patent Exhibit Book.*)

Q. 150. Doctor, I wish you would now take this patent; and I will ask you to state whether the Abbott Laboratories have ever attempted to manufacture cinchophen?

A. They have.

Q. 151. Will you state how cinchophen is made, and particularly with reference to the intermediate that is used?

A. The intermediates which are used as described in this patent are benzaldehyde, anilin and pyruvic acid.

Q. 152. In 1919, February, March and April of that year, were those intermediates available here in the United States?

A. Pyruvic acid to the best of my knowledge was not.

Q. 153. Now, the specifications are the specifications as to the manufacture of this drug cinchophen contained in that patent that is now in evidence?

A. They are.

Q. 154. Now, without my reading to you those specifications, or reading them aloud, although I will do that if Colonel Anderson insists, I am going to ask you what steps you took in attempting to manufacture cinchophen under that patent.

A. 93 parts by weight of anilin are slowly added while stirring to 106 parts by weight of benzaldehyde while at a temperature of about 40-50 centigrade. After standing for several hours a mass solidifies from which part of the water can be poured off. The remainder

of the water can be removed by heating, preferably *in vacuo*. 90 parts by weight of this product of condensation (benzylidin anilin) is dissolved in strong alcohol, the solution is then heated to boiling and 44 parts by weight of pyroracemic acid (or an alcoholic solution of it) are gradually added to the boiling solution. Preferably the mixture of reaction is further heated for some time and the product of condensation is purified in the known manner.

(2) 106 parts by weight of benzaldehyde and 93 parts by weight of anilin are simultaneously dissolved in alcohol, the solution being boiled for about two hours. To the boiling solution 88 parts by weight of pyroracemic acid (or an alcoholic solution of it) are gradually added, the subsequent procedure being as in Example 1."

These two alternative methods were followed out as I have read.

Q. 155. And what was the result of the product that you obtained?

A. Cinchophen.

Q. 156. And in what form did you get it?

A. It was obtained in a very impure form for this reason——

MR. ANDERSON: I think you had better let him answer the question and not argue it.

Q. 157. I will ask you to state what caused the impurity of the product that you have mentioned.

A. As to the cause of it, I cannot say. It seems to be inherent in the method employed. When this method was used, the product was impure, containing some tarry products.

Q. 158. Tarry products?

A. Yes.

Q. 159. Now, having obtained this product which you have described, did you or did you not take any further steps in order to get the pure product?

A. We did.

Q. 160. Please state what was done.

A. We tried every chemical method that we could think of to purify it. We dissolved the anilin and we re-precipitated with acid, we crystallized, and we extracted. We used every method that we could think of to get the product pure.

Q. 161. Well, did you finally find a way of getting the result?

A. We did, but it gave very——

MR. ANDERSON: Please answer the question.

Q. 162. Was the way that you found to get the product in its pure form a way that was described in the specifications of the patent?

MR. ANDERSON: I think I will object to that, sir. I think he can testify as to the way he undertook to get the pure form; what he did.

THE COURT: I think, if that question is proper, it is not so at this stage and the objection is now well taken. I am stating that because there may be different circumstances.

Q. 163. I will ask you this, Doctor: Is the method that you followed to purify the product described in the patent?

MR. ANDERSON: I object again, sir. He can state what method he followed to purify the product.

MR. KRESEL: There we have the question up squarely, your Honor; I mean the question that I brought to your Honor's attention this morning.

THE COURT: Yes. I do not know that the magnitude of the questions involved, or rather, the number of the patents involved, changes the nature of evidence. Consequently, if this were presented in an infringement suit, my impression is that this question would not now be admissible, at least, before he testified what he did, because

there is then no evidence of primary facts or of evidential facts from which that conclusion may be drawn. Now, it seems to me that the record should disclose the facts, and then, whether or not the witness is permitted to give a conclusion from the facts so testified or disclosed of record is more or less an immaterial point; that is, it cannot do any harm; it may help.

Even then that may be extending the scope of expert testimony, which is only for the purpose of defining terms in the art and matters similar to that. But I think the objection is now well taken that you should first ask what steps he took or what process he followed in order to get this result. Whether the question will then be admissible is another matter. I am inclined to think that I would admit it then, resolving the doubt in favor of putting the testimony of record. I do not think this question can now be supported by the principles of evidence.

Now, you may put your answer of record under our general rule, precisely as Colonel Anderson did with Mr. Parmele's answers.

MR. KRESEL: No, I simply wanted to direct your Honor's attention to the fact that the witness has already said that after following out the two methods described in the patent and after getting this tarry substance he took other steps. So that really the question now is simply a sort of summation of what he has already said, and therefore I do not think it is very material. If your Honor feels it ought not to be asked now I will not go into it.

THE COURT: Well, I think it should not.

Q. 164. Dr. Volwiler, can you state how long the Abbott Laboratories spent in developing this method of making cinchophen?

A. I can, approximately.

Q. 165. Will you state?

A. About a year and a half to two years.

Q. 166. And can you state approximately the cost involved in the research and plant, if any plant was necessary for the purpose?

MR. ANDERSON: I object.

THE COURT: Your answer to that is yes or no.

MR. ANDERSON: He may say whether he can state; but I object to that line of testimony, of course.

Q. 166. Can you state? Just say yes or no, please.

A. Yes.

Q. 167. I will ask you to state how much was spent by the Abbott Laboratories in special plant or research or both, in developing this method that you have described of making cinchophen.

MR. ANDERSON: If your Honor please, we object on the ground, first, that it does not appear when this thing was done and does not appear that this gentleman was in any way connected with the Abbott Laboratories when they did it. It does not appear that he is an accountant, does not appear that he made the expenditures, does not appear that he has any primary knowledge of any of the facts upon which the claim of cost is predicated or that he is capable of testifying on that subject.

I make the objection also for the further reason, reserving the point, that as I understand objection was made to similar testimony of other witnesses which I myself was undertaking to introduce. If the objection to that testimony should be sustained finally, then I would want this to go out also. Therefore, I reserve the point on that question until the Court is ready to rule on the admissibility of that evidence.

THE COURT: I am not sure that I have clearly in mind the specific point to which you are now referring.

MR. ANDERSON: The point is that I asked one of the witnesses what he had expended in the development of this process. It was objected to. Your Honor has not ruled on any of these questions, and I want to reserve those questions. Of course, if I had your Honor's ruling I would know whether to object or not.

THE COURT: If I have in mind the point to which you refer, it seems to me it presents a different question.

MR. KRESEL: May I recall to your Honor what the point is. Mr. Parmele was asked to state how much he had spent in advertising his trade-mark.

THE COURT: Yes. I think I have it in mind. I think that presents a slightly different question.

MR. ANDERSON: I simply want to reserve that point. I think that evidence, when properly proved, is admissible; but if any goes out I want all to go out.

THE COURT: You want the evidence of both sides to stand or fall together?

MR. ANDERSON: That is it. That is the reason I make the objection.

MR. KRESEL: Of course, I will show the date when——

THE COURT: I assume you are going to follow this up with the date; are you?

MR. KRESEL: Certainly.

THE COURT: I think the other objections are not well taken, because he says he does know. I will ask the witness now to tell actually what he does know. Just state, Dr. Volwiler, actually what you do know, not hearsay or other informa-

tion but from your own knowledge. You may take the answer, Mr. Kresel.

A. The research cost a little over $17,000 and the equipment something over $10,000.

Q. 169. Will you state what period was covered in the research?

A. That began early in 1918 and extended into 1919.

Q. 170. During that period were you or were you not employed by the Abbott Laboratories?

A. I was not during the first few months of the research, but I was through the greater part of it.

Q. 171. Did you or did you not have part in the research work?

A. I did.

MR. KRESEL: I think I have asked him all the questions on that.

Q. 172. Is there such a product as neocinchophen?

A. There is.

Q. 173. Have you the patent or a copy of the patent covering that product?

THE COURT: Is that one of the defendant's patents?

MR. KRESEL: Yes, all of these I am asking about, your Honor, are the defendant's patents.

A. I have (handing counsel).

MR. KRESEL: I offer that in evidence.

THE COURT: Mr. Kresel, is it your purpose to inquire before you ask about this the nature of the impurities—I do not mean the nature, precisely, because he said they were tar impurities; but I do not know whether that is a detriment or affects the product in utility or in value.

MR. KRESEL: I will ask the question. I thank your Honor for the suggestion.

Q. 174. Dr. Volwiler, of course we are not chemists and we do not know about these things. You say

that the product that was produced in following out the steps described in the patent was a tarry substance. First I want to inquire whether that was the only trouble with it, if I may so term it, and, if not, will you state all of the imperfections, and then will you state in what respect those imperfections interfered with making this a salable product? Do you understand?

A. Yes. If the cinchophen had been obtained by this method in theoretical quantity there would have been no tar, because the tar indicated the reaction had gone in a direction that would give something that was not wanted, some impurity, which was the tarry product, and the more of this tarry product that was obtained, of course, the less cinchophen was obtained and the higher the expense of producing it. The tarry product, moreover, when present in cinchophen, raises the toxicity or poisonous character of the product and of course makes it difficult to handle. No manufacturer would handle cinchophen with the tarry product in it; it would spoil the product. But we did test the tarry product to find out how much damage it would do if a small amount were in there, and we found it to be considerable more toxic than cinchophen itself.

By THE COURT:

Q. 175. What is cinchophen used for?

A. Gout and rheumatism.

Q. 176. And neocinchophen?

A. For the same purposes.

THE COURT: We will assume that all my questions and those of Mr. Kresel are objected to.

MR. KRESEL: This patent that I am now offering is patent No. 1,045,759, issued November 29, 1912, to Albrecht Thiele of Berlin.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 153." (*See Patent Exhibit Book.*)

By Mr. Kresel:

Q. 177. Now, Doctor, the specifications in this patent which I shall read to you are as follows:

> "This invention relates to the manufacture of the ethyl ester of 6-methyl-2-phenylquinolin-4-carboxylic acid which is useful in the treatment of gout and articular rheumatism. . . . It crystallizes in white needles and melts at about 76 degrees centigrade by slowly heating and dissoluble in alcohol, ether and benzine and forms salts with acids.
>
> "The new product may be obtained by esterification of the 6-methyl-2-phenylquinolin-4-carboxylic acid, for instance, in the following way:
>
> "Dry hydrochloric acid gas is passed for some hours through an ethylalcoholic solution of 6methyl-2-phenylquinolin-4-carboxylic acid saturated in the cold with hydrochloric acid. The solution is precipitated with water, extracted with ether, and the residuum of the ethereal solution re-crystallized from alcohol."

Q. 178. Did you or did you not take the steps that I have just read?

A. We did.

Q. 179. Will you state what resultant product there was after you had followed out the specifications as I read it to you?

A. We obtained neocinchophen.

Q. 180. In what form did you obtain that product?

A. It was not in a pure form.

Q. 181. In what way was it impure?

A. It contained other products which were not neocinchophen.

Q. 182. What were those other products?

A. We do not know.

Q. 183. Did you test the product and find the impurities that you have spoken of?

A. Certainly.

Q. 184. Could the product in the form that it was produced, following out the specification that I have read, be used for the purposes for which neocinchophen is used in medicine?

MR. ANDERSON: I object to that.

MR. KRESEL: I withdraw it.

Q. 185. You have already described the effect of the impurity of cinchophen. I would like you to describe in the same way the effect of the impurities in neocinchophen that you say you found.

A. Chemically, it causes the product not to conform with the standards which have been laid down for neocinchophen; so that it would not be a salable product with the impurities in it.

Q. 186. When you speak of standards that have been established, what are you referring to?

A. In the first place, certain products are accepted under certain specifications by the United States Pharmacopœia. Other newer products are passed upon by the Council on Pharmacy and Chemistry of the American Medical Association and each product of each manufacturer which comes under their list must conform to their specifications.

Q. 187. And did this product that you have described as having obtained after following out the specifications in this neocinchophen patent, as I have read to you, conform or did it not conform to that standard?

MR. ANDERSON: I object, if your Honor please, If there are specifications required by the American Medical Association, or any other body which has passed upon this matter, they are specifications in writing, of course, and therefore the speci-

fications must be produced. The witness can testify what he got and produce the specifications, and it is for the Court to determine and we must have an opportunity to investigate as to whether or not it complies with those specifications. He cannot state his conclusion upon it.

MR. KRESEL: On the contrary, your Honor, we are not obliged, upon a collateral matter of this nature, to produce the writing. Such writing is open to counsel for the Government as well as counsel for the defendant. This witness, as an expert, is entitled to state whether or no the product that he obtained conformed to the standard. The standard is not something that we can vary or that the Government can vary. It is a matter, I should think, of which even the Court would take judicial cognizance, a matter that we do not have to put in any writing about.

THE COURT: Is it your purpose to show wherein it varied and how it varied?

MR. KRESEL: I am going to follow that up.

THE COURT: Then that will give to the Government the facts necessary for a complete cross-examination. I overrule the objection.

MR. KRESEL: Will you read the question, please?

(Q. 187 repeated as above described.)

A. It did not.

Q. 188. In what respect did it differ from the standard?

A. The melting point was low; the solubility was not right. Those are the only two things that I remember now.

Q. 189. Doctor, when did the Abbott Laboratories undertake to manufacture neocinchophen as you have described?

A. We began research early in 1922.

Q. 190. And how long did your research continue?

A. Five or six months.

Q. 191. Did you finally produce a product neocinchophen which could be sold?

A. We did.

Q. 192. In what respect if any, did the method that you followed in producing an acceptable product, differ from the method described in the patent, as I read it to you?

MR. ANDERSON: The same objection, and for the reason stated in a similar question preceding.

THE COURT: I do not believe that it is the precise question.

MR. ANDERSON: Then I will state my objection, if your Honor please.

THE COURT: My thought is this: You have indicated your objection, but is this the same question; namely, he is asking now in what respect?

MR. KRESEL: I am asking him for the steps, the differences. I am asking for the facts.

THE COURT: That is different. This does not call for the conclusion as the other did.

MR. ANDERSON: I do not recall the question. The discussion has put the question entirely out of my mind. I cannot recall it. Can the question be read?

(Question repeated). If the witness is going to say what he did to purify the product, or whatever he was trying to accomplish, the steps that he took in detail, in response to that question, if that question calls for that, then, I do not think the form would be objectionable, subject to our general objection, but if he is not going to state those details, but merely going to state his general conclusions as to the difference in his method

and somebody else's method, then I think the question is objectionable.

THE COURT: I rather thought that this question called for the facts, that is, stating in addition to the steps which he says he took in producing this impure neocinchophen, or whatever it is, he took an additional step, or he took one step else, or whatever it was, and it seems to me he can do that by comparison without necessarily stating in detail each step, because you are referring to something in which the steps may be made certain. I overrule the objection.

Q. 193. Will you answer?

A. In the method given in the patent, it gives no description how to prepare the intermediate which is esterified to go in the neocinchophen. In the first place, we had to work out a satisfactory method for preparing that intermediate.

Q. 194. And what was the intermediate?

A. That is 6-methyl-2-phenylquinolin-4-carboxylic acid. In the second place, the method of esterification was not satisfactory, as I so stated, because it involved the use of gaseous hydrochlorid acid, for one thing. It was long drawn out, and it did not give a satisfactory yield. That step we had to change; but if your Honor please, I should prefer not to state what step was substituted for that, because that is one of our commercial secrets.

MR. KRESEL: Still, if the Government insists, I am going to ask the witness to state the step.

MR. ANDERSON: The Government is going to come very near insisting.

MR. KRESEL: The Government is going to come very near insisting—very well then.

THE COURT: Just a minute, Mr. Kresel. Why are we concerned in this suit by asking as to what steps or by what process a certain product is ob-

tained? Are we not limited to the inquiry as to whether or not these steps, as laid down in the patent, or disclosed in the patent, will produce a commercial, pharmaceutical product? Are we not going afield in making the inquiry as to what steps were taken in producing a product, what they call cinchophen?

MR. KRESEL: In my view your Honor, all that it is relevant here is to show, if the defendant can show, that the method outlined in the patent is not a workable method.

THE COURT: It seems to me that is all we are concerned with.

MR. KRESEL: That is all I proposed to offer.

MR. ANDERSON: That may be all that the defendant is concerned with, but the plaintiff has a good deal more concern in the matter. The object of this evidence is obvious, to try to show that that is not a workable patent. Now, this gentleman testified that he has produced this stuff, whatever the name of it is, and he has produced it in a commercial product and sold it in the market, that he has used this patent, but he has had to try other additional methods. Now, that is practically an infringement suit, that is what it is. In other words, if we show that that method that he used is nearly a slightly different or equivalent method of arriving at a product which is covered by that patent, or if we show that this patent is simply a slight improvement or a slight change——

THE COURT: If you can show that.

MR. ANDERSON: That is exactly the point—on this patent; then we have got a right to contend and will contend that all he is doing here, is taking this patent, which is owned by a corporation of which he is a stockholder and which has never

taken any trouble to enforce its rights against him, and never will, and proceeded to make this product, and prevent the payment of royalty, by simply modifying the process slightly, and then claiming that it is not under the process, and it goes to two things: One is that the process that he is varying is the same process, and therefore we have got to know what his process is. We cannot take his opinion as to whether it is the same process or not. We want to know exactly what he is doing all the way through; and in the second place it goes to the value of these patents, both of which are very material.

THE COURT: As to the first point, Colonel Anderson, if the processes of the patent, when carried out, will not produce a satisfactory result, then there is one of three things. There is either no invention in that patent, there is an insufficient disclosure, or a deceptive disclosure. An invalid patent cannot be infringed. Now then, the testimony so far will show invalidity, I take it. Unless you upset invalidity, or nullify invalidity, then you cannot get infringement, can you? I do not see how the answer to this inquiry will be material, unless you assure me that you are going to establish affirmatively invalidity; or is it your contention that this inquiry would establish an invalidity?

MR. ANDERSON: My first contention would be that the inquiry itself will establish validity, but in the second place we are going to show validity; and in the third place, we want to know what this gentleman did, when he claims that he made this product, so that we can show that it does not affect the validity, as a matter of law.

MR. KRESEL: I do not believe, your Honor,

that the validity can be affected one way or the other by what this gentleman did to produce a product.

MR. ANDERSON: That is a matter of law and can be argued either way.

MR. KRESEL: You can either show that he is not the proper kind of a chemist to carry out the steps set forth in the patent and that somebody else carrying out the steps did get the result, or else you have got to take what he says on the subject.

MR. ANDERSON: I certainly will not take what he says on the subject.

MR. KRESEL: I do not believe that it is proper, for the benefit of gentlemen that are close to the prosecution here, that the processes of rivals should be disclosed. However, we are entirely subject to your Honor's ruling in the matter. From our point of view, it is immaterial just what additional or other steps this witness took to produce the product. If it is true that following out the steps of the patent an impure product is produced, that is sufficient. I therefore do not propose to ask him any further questions upon that subject. If counsel on the other side desire to raise it on cross-examination, I think your Honor will then rule.

THE COURT: The witness may answer.

THE WITNESS: Your Honor, I do not think the question of validity or infringement enters into this question at all. It is a product patent; so that no matter what new process we use, we would have to pay royalty under the patent anyhow.

MR. KRESEL: So that question, it seems to me, is disposed of.

MR. ANDERSON: I have great respect for the

witness's opinion both as a chemist and as a lawyer, but I want to conduct this case on my own theory.

THE COURT: I thought the witness was going to speak with respect to the steps taken. The question is not now before me if it is withdrawn.

Q. 195. Now, Doctor, on this neocinchophen how long did you say your research took?

A. About six months.

Q. 196. Can you state the cost thereof? Just say yes or no, please.

MR. ANDERSON: Same objection, sir, as to the preceding questions on this subject.

A. Yes.

Q. 197. Do you know what it was?

A. I do.

Q. 198. Did you take part in the work?

A. I did.

Q. 199. Will you state how much it cost the Abbott Laboratories to prosecute that research work?

A. For research $10,128.

Q. 200. I have one more that I want to inquire about, Doctor, and that is a substance called acriflavine. Have you a copy of the patent covering that?

A. I have.

Q. 201. Will you produce it?

A. (Witness hands paper.)

MR. KRESEL: The witness produces a patent No. 1,005,176, dated October 10, 1911. I shall offer it in evidence. Do you want to see it, Colonel Anderson?

MR. ANDERSON: Have it marked and I will look at it afterwards.

Received in evidence and marked "Defendant's Exhibit No. 154." *(See Patent Exhibit Book.)*

Q. 202. While the Clerk is marking that; is there

another product called proflavine, or is it the same product as acriflavine?

A. It is not the same, but it is a kind of a switch from the process for making acriflavine, where you go off to one side one step and get proflavine. It is a related product.

Q. 203. What is acriflavine used for?

A. It is used as a general antiseptic.

Q. 204. And proflavine?

A. For the same purpose.

Q. 205. Is there a separate patent covering proflavine?

A. No, there is not.

Q. 206. This patent covers both acriflavine and proflavine?

A. I doubt whether proflavine is really a patentable product.

Q. 207. At all events, this is the only patent covering this drug, whether it is in the form of acriflavine or proflavine?

A. Yes, it is.

Q. 208. Are you familiar with the specifications in that patent?

A. I am.

Q. 209. Have you personally followed them out?

A. I have.

Q. 210. When?

A. I think it was—I know it was in the spring of 1920 when we started.

Q. 211. How long did your research last?

A. Over a year.

Q. 212. And how many men were engaged in it besides yourself, if any?

MR. ANDERSON: Will you wait just one minute?

MR. KRESEL: Certainly.

MR. ANDERSON: I wish to reserve the question by noting an objection to the evidence of these experiments in patents transferred to the Chemical Foundation in 1919, which took place in 1920, 1921, 1922 and 1923, on the ground that those facts were not known to the Chemical Foundation at the time of this purchase and could not affect the value in any way. I merely want to reserve the question. I can see that there are arguments on both sides. I merely want to note it to the end that a motion to the proper effect may be made at the proper time if I so decide.

(Q. 212 repeated as above recorded.)

A. One in research continuously, and at various times, several others.

Q. 213. Do you know the cost to the Abbott Laboratories of this research work?

A. I do.

Q. 214. Will you state what it was?

MR. ANDERSON: Objected to on the same grounds as above.

THE COURT: The same ruling.

A. Research, $12,162; equipment, $2000.

Q. 215. Please state what result you obtained upon following out the specifications in the patent now in evidence.

MR. ANDERSON: I object on the ground that he must state what he did.

I think that is based upon the statement that he took the several steps called for in the patent. It seems to me that if you have any doubt as to whether he took those steps, that would be proper cross-examination. I am only giving my impression.

MR. ANDERSON: I will just note the objection. If it is not well taken, I will not press it anyhow.

Q. 215. (continued). Will you state?

A. We never obtained any.

Q. 215a. Any what?

A. Acriflavine or proflavine.

Q. 216. In the matter of taking out licenses under patents by the Abbott Laboratories, what if anything have you to do with that?

A. It is up to my department to investigate the methods covered by the patent, the products obtained therefrom, the yields obtained, the cost of producing them, and to make recommendations as to whether that patent would be a desirable thing for our company to operate under.

Q. 217. Do or do not the same considerations apply with reference to purchasing patents?

A. They do.

Q. 218. You stated on Friday that on three different occasions you had examined the list of drug and pharmaceutical patents that had been sent out by the Chemical Foundation. Will you state whether your company took out any licenses from the Chemical Foundation following your examination of the list.?

MR. ANDERSON: I object, if your Honor please. The question of what licenses were taken out by the Abbott Laboratories is a matter of record here, and the evidence on that subject, as to what they took out.

MR. KRESEL: I did not ask him what they took out, but whether they took out any.

MR. ANDERSON: I beg your pardon. There is evidence here that they did take out licenses—written evidence put in by the defendant that they took out licenses.

MR. KRESEL: The written evidence being in, is it still objectionable for me to ask this witness?

MR. ANDERSON: Whether they took out licenses?

MR. KRESEL: Yes.

MR. ANDERSON: I think so. I think you have got to prove what licenses passed between the Chemical Foundation and the Abbott Laboratories by written evidence, by the licenses themselves.

THE COURT: Is this an ultimate question or a preliminary question?

MR. KRESEL: It is a preliminary question.

THE COURT: I can see its usefulness as a preliminary question. I will overrule the objection.

A. May I have the question again, please?

(Question repeated.)

A. They did following the first examination, I know.

Q. 219. Do you know how many?

A. Two, I know.

Q. 220. And on what patents?

A. Acriflavine and neocinchophen.

Q. 221. Did you subsequently make any other examination of this list of patents held by the Chemical Foundation to determine whether you would take other licenses?

A. We did.

Q. 222. And did you take any other licenses?

A. We did not.

MR. KRESEL: That is all. You may examine, Colonel. But pardon me a minute. Doctor, you told me this morning you wanted to make some correction in your testimony of Friday. May the witness do so now, your Honor?

THE COURT: Yes.

THE WITNESS: In the evidence that I gave Friday on page 3280, in answer to the question concerning salvarsan, "And is it possible or can the product be produced with the information that is contained in the patents" my answer was "No." I should have answered that more accu-

rately, probably, if I had said from the commercial standpoint, considering yield obtained and quality, satisfactory quality, no. Undoubtedly some small quantities of material would have been obtained. My intention was not to say that none could be obtained, but that from a commercial standpoint it would not have been satisfactory in yield or quality.

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 223. Doctor, what plants have the Abbott Laboratories? And where?

A. A plant in Chicago, a plant in Philadelphia, and some manufacturing is done at Toronto, Canada.

XQ. 224. Have they any abroad?

A. No.

XQ. 225. Do they import any of their products?

A. Naturally occurring products, yes.

XQ. 226. Do they export any of their products?

A. Yes.

XQ. 227. They sell throughout the United States?

A. Yes.

XQ. 228. And ship to various points and to practically all the cities in the United States, do they not?

A. Yes.

XQ. 229. What you have said in regard to the extent of their trade and business applies to salvarsan and novocaine and other products made under licenses from the Chemical Foundation or the Federal Trade Commission, does it not?

A. It does.

XQ. 230. How old are you, Doctor?

A. Thirty.

XQ. 231. When did you graduate in chemistry?

A. I got a Bachelor's degree in 1914.

XQ. 232. At what place?

A. Miami University.

XQ. 233. Miami University in Ohio?

A. Yes.

XQ. 234. Will you tell me again just what you did from 1914 on, giving the years and the place?

A. In the Fall of 1914 I went to the University of Illinois as graduate student in chemistry and candidate for the Master's degree. I stopped there in connection with my work during the following year and during the two following years and during each intervening summer. I would like to make a statement. The University of Illinois carries out the preparation of organic chemicals which are not available in this country and in that work there are always from ten to twenty men employed who make the preparations and they are sold throughout the country not only to universities but to all manufacturing concerns. I worked at that one summer and the two following summers I had charge of the work; I was in immediate charge of the work. In 1918, I received the degree of Ph. D.

XQ. 235. You were an instructor then in the University of Illinois during the latter part of your service?

A. Not the last year. The last year I was on a fellowship and did no teaching.

XQ. 236. Then you were a student there really in the work which you have indicated up to 1918; what time in 1918?

A. Up to the fall of 1917. My last school year there started in the fall of 1917 and lasted until the spring of 1918.

XQ. 237. Now then, when you left the University of Illinois, you went to the Abbott Laboratories?

A. I did.

XQ. 238. At what time did you enter that service?

A. May 27, 1918.

XQ. 239. What was your position?

A. Operating chemist in the factory.

XQ. 240. State just what you did as operating chemist, will you?

A. At that time the Abbott Laboratories had just undertaken or were just considering the manufacture of a number of these synthetic medicinals and since they came together largely, there was a great deal of work connected with that, not only on the research side but in developing them in the plant and bringing them up to the scale of manufacture in commercial quantities. My work was to carry that through to a commercial scale and to see that they were actually developed on a satisfactory commercial basis.

XQ. 241. How many men were engaged in that work in the Abbott Laboratories?

A. In the plant at that time we had about thirty men, 25 to 30 men.

XQ. 242. You were one of thirty men engaged in that operating work in the Chemical Department, were you?

A. Yes.

XQ. 243. How long did you occupy that position?

A. About a year.

XQ. 244. Then what was your next position in the Abbott Laboratories?

A. Research chemist.

XQ. 245. What was your particular work in that connection?

A. My work was to help iron out difficulties which were given to us by the plant. Of course, a number of these products that we were manufacturing at that time or trying to manufacture were by no means satisfactorily worked out and there were research problems as well as plant problems hanging over and most of our problems at that time were concerned with those

difficulties. Then in addition to that we took up new products or original research on new products that had not been worked on before.

XQ. 246. That is true of all business, is it not, that it requires constant technical development and research for manufacture in satisfactory form, is it not?

A. I am acquainted with only the chemical business.

XQ. 247. It is true of the chemical business, however, in all plants?

A. Yes.

XQ. 248. How long did you stay in that position as research chemist?

A. About two years.

XQ. 249. That brought you down to 1921?

A. That is right.

XQ. 250. How many research chemists did the Abbott Laboratories have?

A. It varied at different times. About five.

XQ. 251. So you were one of five chemists engaged in what you call ironing out the difficulties in the development of these various products into commercial fitness; is that true?

A. Yes.

XQ. 252. The questions were referred to you, as I understand it, by the Laboratories, you and your associates? Where a little difficulty would arise, they would have you make the research necessary to remedy or overcome that difficulty; is that true?

A. Yes, sir.

XQ. 253. In 1921, what did you become?

A. Chief Chemist.

XQ. 254. As chief chemist, what did you do?

A. I directed the research of the other men. New problems that need solving as well as the problems that come in relation to difficulties in the plant are referred to me and I give them to the men and super-

vise their work. Once in awhile, if I happen to have a litle spare time, I do some laboratory work myself.

XQ. 255. Up to 1921, your work was purely laboratory work?

A. Not purely, no; although almost entirely.

XQ. 256. Almost entirely laboratory work?

A. Yes.

XQ. 257. Since you have become chief chemist, you direct the laboratory efforts and the chemical efforts of the other chemists employed in the positions that you indicated you formerly occupied?

A. That is true.

XQ. 258. How many men are employed in the laboratories at Chicago, do you know? I mean in the whole business.

A. Do you want me to include men and women in that?

XQ. 259. Yes, I use the term "men" in the generic sense.

A. About 300.

XQ. 260. Your dealing, as I understand it, is with about thirty-five of that 300, is it not? You said about thirty of these young chemists and about five of the research chemists?

A. Well, as far as the actual chemical work is concerned, that is true. But, of course, my dealing with my superiors and associates in other departments is in addition to that.

XQ. 261. Has the Abbott Laboratories a sales department?

A. Yes, sir.

XQ. 262. Has it what we call a commercial department, that deals with its commercial business?

A. Yes, sir.

XQ. 263. Could you state generally into what departments the business is divided?

A. The sales department, advertising department,

commercial department, veterinary department, biological department, accounting department, credit department, various manufacturing departments, pharmacological department. Those are some of the departments.

XQ. 264. And have they a pathological department for tests in addition to that?

A. Yes.

XQ. 265. Outside of your dealing with your superiors, getting instructions, and with your executive officers and so forth, your work at present is in charge of the chemical department?

A. Yes.

XQ. 266. Strictly research chemical department?

A. Yes, and correlating its efforts with those of other departments.

XQ. 267. Now Doctor, you have told me fairly your experience as a chemist, have you not?

A. I have.

XQ. 268. Had you ever been in business before you became a chemist, or have you ever been in business since you became a chemist except in the manner you have indicated?

A. I have held other chemical positions, but I have never been in business for myself.

XQ. 269. You are strictly a scientific and not a commercial man, as I take it?

A. That is right.

XQ. 270. You stated you had been in other business. Have you ever been in the industrial business at all? I mean industrial as distinguished from the scientific or technical chemical business?

A. No.

XQ. 271. You spoke of novocain as a drug being largely used throughout the world as a local anesthetic?

A. Yes.

XQ. 272. Its use has increased very rapidly, has it not

A. I do not think it has in the last few years, although I have no——

XQ. 273. You have no knowledge on that subject?

A. No.

XQ. 274. It did increase very rapidly up to the last few years, did it not?

A. I think so.

XQ. 275. When was it first put on the market, do you know?

A. About 1906. It was patented and was put on the market in Germany about the same time and I understand it was brought into this country soon afterwards.

XQ. 276. It was very largely used in this country prior to the war, was it not?

A. I do not know.

XQ. 277. Well, you know when you became a chemist it was in very extensive use, was it not?

A. I could not speak of the extent of its use. I had heard of it, but I do not know about the extent of its use.

XQ. 278. But it had been on the market both in Germany and in this country substantially since 1906?

A. That is right.

XQ. 279. I will ask you to take Patent No. 812,554, which has been spoken of here as the novocain patent and say if you follow the process indicated in that patent what you produce?

A. We produce novocain.

XQ. 280. It is novocain?

A. Yes.

XQ. 281. And I think you testified on Friday that procain and novocain were the same things, only different trade names of the same product?

A. That is correct.

XQ. 282. Then if you follow the process indicated in that patent, you would also produce procaine?

A. Yes, sir.

XQ. 283. Now I will ask you to take the patent which has been spoken of here as the Adams Patent No. 1,260,289, Plaintiff's Exhibit No. 151, and tell me if you follow the process therein outlined what you produce?

A. Produce an intermediate which can be used to produce procaine.

XQ. 284. What is the intermediate?

A. It is a gamma-bromæthyl—I will have to refer to this (referring to patent). It is a beta-bromœthyl ester of para nitrobenzoic acid.

XQ. 285. Then you do not pretend to produce either novocain or procaine under this patent?

A. No.

XQ. 286. Is not the patent No. 812,554, a product patent?

A. Yes, sir.

XQ. 287. Then as I understand it, Doctor, the patent which we call the Adams patent for convenience —you understand what I mean, of course?

A. Yes.

XQ. 287 (continuing). Is merely a patent for producing a certain intermediate which you subsequently use in the production of novocain or procaine under the other patent?

A. That is true.

XQ. 288. Now, I will ask you to take these two patents, and begin at the beginning and take each process, taking the so-called novocain patent or German patent first, and follow that process down, taking the first step and the second step, and tell me where the intermediate covered by the Adams patent comes in?

A. Yes. Colonel Anderson may I refer to the lines in these to simplify my references?

XQ. 289. Refer to it in any way that will simplify and help you in giving an answer to the question. What I want are the facts.

A. In line 36——

XQ. 290. First take up the first step, what I want you to do is to tell me——

MR. KRESSEL: He is doing it I think.

THE COURT: Go ahead.

XQ. 291. Go ahead and I will correct if it is necessary.

A. I should say, first, that everything before line 36 in the German patent, is supplemented according to the Adams and Kamm method, by their patented method, and instead of using paranitrobenzoylchloroethanol, which is mentioned in the German patent, we used the paranitrobenzoic acid which is described in the Adams and Kamm patent, and the following steps then involved diethylamin, as given in the German patent and reduction.

XQ. 292. Now, Doctor, I have no doubt you have made it perfectly clear to a scientist, but not being one, I want to get it a little more definitely, so that an ordinary man can understand it if possible. You start out to make this stuff, that combination of two chemicals or three chemicals as the case may be, don't you?

A. Yes.

XQ. 293. When you first start in your laboratory making it, what are those chemicals?

A. You mean in the German patent?

XQ. 294. I mean in the German patent—I am going to make novocain with you.

A. Ethylene-chlorhydrin, and para-nitrobenzoyl-chlorid.

XQ. 295. Those are the two you start with?

A. Yes.

XQ. 296. Now, those are both mentioned in the German patent, are they not?

A. Yes.

XQ. 297. And you have not gotten to the use of your other intermediate you spoke of yet in the Adams patent?

A. No.

XQ. 298. Can you tell me what you get in the way of a resultant through putting those two together?

THE COURT: The German patent.

XQ. 299. Now, we are dealing with two German patents and chemicals, or whatever they are that you start with. What have you gotten now when you put those two together, and what is your reaction?

A. From those two you obtain para-nitrobenzoyl-chloroethanol.

XQ. 300. We have not come to the intermediate covered in the Adams patent yet? Now what is the next step, have you got that thing?

A. Diethylamin.

XQ. 301. Is that mentioned in the German patent?

A. Yes.

XQ. 302. The next step. You have not gotten that reaction from the first two chemicals; you had another mentioned in the German patent?

A. Yes.

XQ. 303. What did you get then?

A. You get the nitro base of procaine, that is, you are one step away from procaine.

XQ. 304. What is the next step?

A. The next step is the reduction.

XQ. 305. First, take the German patent and tell me what you use under that in the next step, adding it to what you produce, that is, having a nitro base, what would be the next thing you would add in the German patent?

A. The reduction is carried out with tin and hydrochloric acid.

X. 306. In the German patent?

A. Yes.

XQ. 307. Now, in the method you say you followed in the Adams patent, what did you do next?

A. We did not get that. They did not get that far in the Adams and Kamm patent, because it hitches onto the method given in the German patent, a little before that step.

XQ. 308. All right. What I have been trying to find out is how it hitches on and where. Will you go back and begin at the beginning, and hitch it on at the right place, and tell me what it substitutes for?

A. I mentioned before that in the German patent, by the combination of two chemicals, we get para-nitrobenzoylchloroethanol.

XQ. 309. That is the first combination you get

A. Yes. The Adams and Kamm patent is intended to replace that substance right there. That is where the essential difference comes in. Instead of that compound, the Adams and Kamm patent makes it of betabromoethelester and para-nitrobenzoylchlorid acid, and from there on, the process can be followed out as given in the German method, if so desired.

XQ. 310. And you get novocain?

A. That is satisfactory. Or by some modified method and it leads to novocain.

XQ. 311. In both instances you lead to novocain or procaine, as the case may be?

A. Yes.

XQ. 312. That being the same product?

A. Yes, sir.

MR. ANDERSON: Is the novocaine patent introduced in evidence?

MR. GALLOWAY: It is my understanding.

THE CLERK: I have not been able to find it yet. I have been looking for it.

MR. KRESEL: There is some doubt about that, Colonel, as to whether it is or not in evidence.

MR. ANDERSON: I will go on now with the understanding that if it is not in, it will be introduced either by you or by myself.

MR. KRESEL: That is all right. Suppose you put it in now, and then if we find that it is a duplication, we will have it withdrawn. I think it is mine. Put that in as my exhibit, please.

Received in evidence and marked "Defendant's Exhibit No. 155," Patent No. 812554, dated February 13, 1906. (*See Patent Exhibit Book.*)

XQ. 313. Now, as I understand, Doctor, the original of what we call the German Patent or the novocaine patent, did not purport to cover any formula for the manufacture of what is it—ethylene-chlorhydrin—it did not purport to cover that, did it?

A. No.

XQ. 314. It simply assumed the taking of that as a known product?

A. Yes, sir.

XQ. 315. Now that particular chemical, whatever it is, was well known in the profession, was it not?

A. Yes.

XQ. 316. You spoke of the fact that as an intermediate, it was difficult to get in 1917 and 1918, I think because it was also used in making poison gas?

A. Yes, sir.

XQ. 317. There was trouble in getting it in 1919, was there not?

A. Probably not.

XQ. 318. And it had been known to the chemical profession in the United States certainly since 1906, when they began to make novocaine, had it not?

A. Yes.

XQ. 319. I want to ask you this question, and I am going to try to illustrate it, because not being a chemist, my questions may be very difficult for you. If you took a cookbook and went in the kitchen, and never made a certain food, and you make it strictly in accordance with the cookbook, do you always get a good food?

A. I do not suppose so.

XQ. 320. Well, now is it not true in chemistry, and am I right, that in all of the making of chemical products, a certain amount of experience and testing is necessary, even if you have the formula complete before you?

A. It is; and I would like to clarify that by saying that it depends, of course, upon the complexity of the compound you are making how many difficulties might arise. Each case is made very different from another case.

XQ. 321. In other words, in a very complex combination of chemicals, the chemist is himself often surprised at the reaction that he gets, is he not?

A. Yes.

XQ. 322. A slight variation in the molecular make-up of that chemical might vary the product, might it not?

A. Yes.

XQ. 323. And is it not true that one chemist may have the misfortune to get a poor result in a test, and another chemist making apparently the same test, with apparently the same products, gets a different result, a slightly different result? Is not that true in chemical laboratory work?

A. You are assuming now, Colonel, that they have directions before them, the same directions?

XQ. 324. I am assuming that they are working on the same formula and they are taking as nearly as they can get it, the same products, and yet they very

often get varying reactions, do they not, in chemistry?

A. They do if the details are not sufficiently and clearly enough pointed out.

XQ. 325. I see; and I understand that is what you meant this morning when you modified your answer and said that it would be impossible for anybody to make salvarsan, for instance, on the salvarsan patent. You do not mean to say what is possible for chemists generally, do you? You do not claim omniscience in chemistry, do you?

A. No, I do not.

XQ. 326. I thought not. Even a young man does not claim that.

MR. KRESEL: He has not answered your question.

THE COURT: The question is still left. Of course he is not omniscient, but skilled in the art.

MR. KRESEL: Of course he said he was not omniscient.

XQ. 327. I do not mean to reflect on you in any way.

THE COURT: The question arising in my mind, Colonel Anderson, is simply this: If I understand at all about patents, a patent is supposed to speak not as to his omniscience, but merely to those skilled in the art; so it seems to me the inquiry that would help me would be, what the patents speak to those skilled in the art. I am only saying that so that you will not be taken by surprise if I should base a conclusion on that later; so that you may inquire as to that if you want to.

XQ. 328. You said that you got novocain in your experiments under what we are speaking of here as the German method?

A. Yes, sir.

XQ. 329. That in your experimentation it was, I

believe you said, not of satisfactory purity, or impure. What steps did you take to purify it?

A. As I mentioned in the case of one of those other compounds, cinchophen, a little while ago, we tried every method that we could think of as available to us as chemical methods. We tried extraction. We tried recrystallization. We varied the methods used in the next-to-the-last step and in the last step, in order to try to avoid getting those impurities in. We probably tried dozens and dozens of different methods.

XQ. 330. And you got a pure product, did you not?

A. Yes, finally.

XQ. 331. You did get a pure product. Now, how did you get it?

A. You mean by following out the German method?

XQ. 332. Yes, after you followed out the German method and you said you got an impure product, what did you then do to get a pure product?

A. Extracting and recrystallizing again and again.

XQ. 333. And you got it purified?

A. Yes.

MR. KRESEL: Which product is this you are talking about?

MR. ANDERSON: I am still talking about novocain.

XQ. 334. When you used subsequently the intermediate covered by the Adams patents, you got novocain, did you not?

A. Yes, sir.

XQ. 335. The same stuff that you got after you purified the original, was it not?

A. Yes, sir.

XQ. 336. And you got a somewhat improved yield by using this different intermediate?

A. Yes, sir.

XQ. 337. I believe you said that this was a product patent and it covered the product obtained by both chemical processes?

A. Yes, sir.

XQ. 338. You spoke of toxicity, which I understand to be, in simple language, a poisonous quality?

A. Yes, sir.

XQ. 339. Or poisonous element in the product. How did you remove the toxicity from the product which you obtained under the German patent?

A. By repeated crystallizations.

XQ. 340. In the method which you follow, using the intermediate covered by the Adams patent, at the stage which you have described, how did you avoid toxicity in that instance; what method did you employ?

A. The fact that that intermediate was used in itself caused the avoidance of the production of most of that toxic material. In the second place, of course, we purified the final product.

XQ. 341. You purified the product in both instances, did you not?

A. Yes. Of course, the final product has to be purified.

XQ. 342. Yes, has to be purified and refined. You manufactured in your experiments with this patent which I understood you to say you made in 1916 and 1918 in the University of Illinois—you manufactured there your own intermediate ethylene chlorhydrin?

A. Yes.

XQ. 343. You made your own ethylene chlorhydrin when you were making these experiments?

A. Yes.

XQ. 344. You did not get it on the market?

A. No. Well, we may have purchased some. We may have been able to pick up a pound here and there.

XQ. 345. Yes, but you had to manufacture that intermediate, which was specified in the German patent to be used in the process there outlined?

A. Yes, sir.

XQ. 346. And you did not manufacture that under the German patent, did you?

A. No, that is not covered by the patent.

XQ. 347. You do not know of your own knowledge how the original patentee of this patent made his ethylene chlorhydrin, do you?

A. No.

XQ. 348. You do not know at what stages of purity he used it in the making of novocain, do you?

A. No.

XQ. 349. Doctor, when was this intermediate which you speak of as being made under the so-called Adams patent put on the market, in the medical world of the United States?

A. Some time in 1918.

XQ. 350. About what time?

A. I think it was in the spring of 1918. There may have been very small quantities produced, a little, before that, but we had worked on the various methods so long that no considerable quantity was on the market until 1918.

XQ. 351. Do you know of any other manufacturer of novocain that used that product during 1918 or 1919?

A. I do not, no, but——

XQ. 352. You do not know of anyone else?

A. We were under the impression at the time that at least one other manufacturer was using the same method; but I do not know it.

XQ. 353. You do not know it?

A. No.

XQ. 354. So far as you know, then, the other manufacturers producing novocain, the number of which

you have referred to on the former testimony I think as three, perhaps under Federal Trade Commission licenses, were producing novocain strictly in accordance with the German patent or process, so far as you know?

A. Not necessarily. That does not follow, Colonel Anderson.

XQ. 355. Probably you did not get my question. So far as you know they were so engaged?

A. So far as I know, yes.

XQ. 356. Doctor, you had no connection whatever with the accounting department of the Abbott Laboratories, did you?

A. No.

XQ. 357. I do not suppose you ever kept books in your life; have you?

A. I never have.

XQ. 358. Who purchased the supplies of the Abbott Laboratories?

A. Mr. Drack of the purchasing department.

XQ. 359. There was a purchasing department, was there?

A. Yes.

XQ. 360. He purchased not only the supplies used in manufacture and experiments, but also the mechanical supplies and equipment, did he not?

A. Yes, most of it. Some of the mechanical supplies were purchased directly and not through him.

XQ. 361. Can you state what of your knowledge was purchased directly?

A. Well, I could name the particular pieces of apparatus, but they would not mean anything as given here unless I could have them before me to identify them.

MR. KRESEL: Well, go on and mention them.

THE WITNESS: Now, we——

XQ. 362. When you say "we" I wish you would use the personal pronoun "I" instead.

A. Yes.

XQ. 363. Because I want to know what you did, not what "we" did.

A. I purchased a drier and a still that were used in the manufacture of procaine, novocain.

XQ. 364. You did?

A. And I co-operated in buying other pieces of apparatus—kettles, autoclaves, stills, driers, centrifuges, and so on, which were used in such manufacture.

XQ. 365. The word "co-operated" is rather broad. Will you tell me just what you did?

A. We have a plant manager, of course, and it was my duty as chemist to help him in developing these processes on a commercial scale. We would discuss what was needed and go over each product and each process used in the various products, and decide what was needed, then order the apparatus.

XQ. 366. Through the purchasing agent?

A. Not always, no. Sometimes direct.

XQ. 367. What I am trying to get at is what you actually bought personally, contracted for personally, and what you purchased through the regular organization of the Abbott Laboratories.

A. I never purchased anything personally.

XQ. 368. You never did?

A. Whatever I recommended either went to the purchasing agent or to the superintendent, and was then transmitted to the manufacturer.

XQ. 369. And the superintendent or purchasing agent then gave an order to the manufacturer, the manufacturer sent the supplies, and they were installed; is that the idea?

A. Yes, sir.

XQ. 370. And then the bill would come in to the purchasing agent, go to the accounting department and to the treasurer for payment; is that it?

A. That is correct.

XQ. 371. You had nothing to do with those accounts that came in?

A. No, sir.

XQ. 372. Knew nothing of the bills or anything of that sort?

A. Not of the bills directly, only insofar as the prices were quoted to me or to the plant manager when we were together by the representatives of the manufacturers, so that I knew what was going to be charged for this apparatus before we ever placed the order.

XQ. 373. Doctor, who is in charge of the books of the Abbott Laboratories at Chicago?

A. Mr. Stiles.

XQ. 374. What is his full name?

A. James F. Stiles.

XQ. 375. What is his position?

A. He is head of the cost department.

XQ. 376. All accounts are kept under him, are they?

A. Well, he co-operates with the accounting department of which Mr. Wolff is the head.

XQ. 377. What is his full name?

A. I do not know his initials.

XQ. 378. Is he the auditor or chief accountant, or what is his position?

A. He is the chief accountant.

XQ. 379. Mr. Wolff?

A. Yes, sir.

XQ. 380. How do you spell his name?

A. He spells it Wo-l-f-f.

XQ. 381. Who has charge of the records of the chemical processes followed? I suppose you keep those records, do you not?

A. Yes.

XQ. 382. Who has charge of those?

A. Do you mean after they get out in the plant, in the actual commercial work?

XQ. 383. Yes, who has charge of those records when they are kept there in the file or among the records of the Abbott Laboratories?

A. I have a file of my own; the superintendent keeps a complete file and the manufacturing department keeps a complete file.

XQ. 384. If I went there to see that person, who would be the one I would have to see to get them and who would have charge of them?

A. I think my department is the only department that has a complete file.

XQ. 385. Of the processes of manufacture, the chemical processes and the results of your experimentation?

A. Yes.

XQ. 386. And all of those matters are matters of record in your office, are they not?

A. Yes, sir.

XQ. 387. You testified on your direct as to the costs of research work. Will you state the elements of cost upon which those figures were made up?

A. I was asked at the time not to include overhead.

XQ. 388. You did not include overhead?

A. So that I was figuring on the cost of materials, the pay of the men involved, and any apparatus that might have been used.

XQ. 389. In 1918 and 1919 you were one of the chemists at the works, were you not?

A. Yes, sir.

XQ. 390. Did you know anything about the cost at that time of the work of research going on in the laboratories?

A. I did.

XQ. 391. How did you know that?

A. Because those men were really working under my direction, although I was not chief chemist at the time. Most of that work, by the way, was actually carried out in the plant laboratory. The Abbott Laboratories at that time did not have much of a research department, as a distinct department or an entity in itself.

XQ. 392. I was speaking of the time you were working as one of those research chemists.

A. That included the workmen. They were not all chemists by any means.

XQ. 393. Doctor, did you keep up with the compensation paid to all those men?

A. I did.

XQ. 394. Did you keep up with the cost; did you know the cost of materials?

A. I did.

XQ. 395. How did you know the cost of materials?

A. One way was that the plant manager became sick, he had the influenza at that time, and I was put in charge while he was ill.

XQ. 396. That material was all purchased by the purchasing agent, was it not?

A. Yes, sir.

XQ. 397. And the accounts, as you stated, were kept by the accounting department?

A. Yes, sir.

XQ. 398. And the accounts of overhead were kept by the accounting department?

A. Yes, sir.

XQ. 399. You as one of the junior chemists among thirty in the chemical department, that is in the factory or the work department, knew of the cost and can speak of the cost entering into every item of this business—you think you can?

A. You mentioned overhead there.

XQ. 400. No, I mean the others. You can state

the amount of cost, the amount this company spent during 1918 in research work?

A. I knew at that time what the chemicals cost, I knew what the pay of the men was, the workmen, and I knew what the pay of the chemists was, yes.

XQ. 401. Doctor, did you not when you came down here to testify go to the accountant and get a statement of it?

A. I did on the apparatus, the total apparatus.

XQ. 402. Did you not ask him to give you a statement of the amount expended in research of novocain?

A. Yes, but that included overhead.

XQ. 403. And you got the figures from the accountant of the accounting department, and you spoke the other day from those figures, did you not?

A. I did. However, the figure——

XQ. 404. Then will you tell the Court——

MR. KRESEL: Let him finish.

A. (Continuing.) The figures that I had here included the overhead and, as I stated the other day, I could not use those figures because they included the overhead, and therefore I could only make a rough estimate as to what the salaries and cost of materials would be.

XQ. 405. And you now undertake to state from memory and from your position as chemist in the work department of this laboratory, that you can tell the amount the Abbott Laboratories expended in research in 1918, in the development of novocain?

A. Roughly, yes.

XQ. 406. Roughly?

A. That is what I stated my estimate was.

XQ. 407. You think you can remember that, and you are one of thirty working in the shop?

A. Yes, sir.

XQ. 408. In the next place, when you were in the laboratory working as one of the five research chem-

ists, and you were no longer in the shop, you still know how much the shop cost was of these investigations of your own knowledge?

A. By my conversation with the men in charge.

XQ. 409. Oh, by your conversation; what they told you?

A. Yes.

XQ. 410. Then your knowledge on that subject of the cost of research there was based on what they told you, was it?

A. Largely, yes. Sometimes I would see a record, but, of course, I could not see every record.

XQ. 411. But even the records that you saw, you did not make them up, did you?

A. No, that is up to the Cost Accounting Department.

XQ. 412. And your knowledge on that subject is derived from what they told you and from records that you saw?

A. Yes, sir.

XQ. 413. And as a matter of fact, doctor, did you not go to the Accounting Department to get that information before you came here?

A. Yes, sir.

XQ. 414. And you have never seen the books from which it was taken, have you?

A. Yes, sir.

XQ. 415. You have seen them?

A. Yes, sir.

XQ. 416. You have seen them there in the office?

A. Yes, sir.

XQ. 417. Have you ever checked them yourself?

A. No, sir.

XQ. 418. You have never entered a figure on them, have you?

A. No, I do not know enough about books to do

MR. ANDERSON: I thought so.

MR. KRESEL: All of which was made perfectly plain on the direct, your Honor.

MR. ANDERSON: I do not think so.

Now I shall call for the production of the books of the Abbott Laboratories; and I move to strike out all the testimony of this witness as to the cost of research work in the Abbott Laboratories until those books are produced.

THE COURT: That motion is a conditional one.

MR. ANDERSON: Then I move it absolutely now, and remove the condition, and then call for the production of the books, because I want to know what they did spend.

THE COURT: I did not understand your last few words, Colonel Anderson.

MR. ANDERSON: I beg your Honor's pardon. I was turning away from your Honor just then. I move to strike out the evidence of this witness as to the cost of research or other work in the Abbott Laboratories, for the reason that he is not competent to testify with respect to the same.

THE COURT: Does that include all his estimates of values?

MR. ANDERSON: It includes his testimony as to the several items and the cost of research work to the Abbott Laboratories with respect to novocain.

THE COURT: My difficulty, Colonel Anderson, is this: The witness has disclosed that he has certain knowledge with respect to certain items, and that could not go out. Now, what I was trying to get at was whether you are attempting to separate the several items, and whether your application goes to certain specific items or to all of them?

MR. ANDERSON: No, sir. My application is

this: The witness did not segregate items in his testimony. He stated a gross sum in the cost of research work. It is perfectly obvious that he cannot testify as to a gross sum in the cost of research work, and therefore his evidence would be stricken out as a whole. If they wish to have him testify as to any specific items as to which it may appear that he has knowledge, why, then the question will arise when they undertake to introduce that evidence; but the evidence on the gross sum must go out, I submit. When I say "must," I mean, of course, I submit.

THE COURT: Have you anything to say, Mr. Kresel?

MR. KRESEL: Yes, your Honor, I have a good deal to say. To begin with, the cross-examination has touched only the item of research expense on novocaine. As to that the witness has testified that he had personal knowledge of what was spent for all items except overhead, and has stated that in giving the sum that he gave last Friday he excluded overhead. Therefore, as to the subject which counsel has inquired about on cross-examination, that is not subject to a motion to strike out because it is based upon the witness's personal knowledge. If counsel will develop on cross-examination that there is an imperfection in the witness's testimony as to the other items of research under the other patents, why, we will meet that situation when it arises.

THE COURT: In testifying a moment ago that he had no personal knowledge of certain items, was that overhead that he was talking about then?

MR. KRESEL: That was my understanding, and it was the overhead on novocaine.

THE COURT: I was laboring under the appre-

hension that it covered something else than novocaine. What was your understanding?

MR. KRESEL: Let the record be read. I may be wrong. Let Colonel Anderson state his understanding.

MR. ANDERSON: I was speaking at the moment of novocaine, of his statement as to the cost of experimentation on novocaine. The witness testifies that the expenditures of the organization are made through the Purchasing Agent; that he discussed in connection with a few items, the question of machinery, what was the list price, whether they paid the list price or not, I do not know, and he does not apparently know.

THE COURT: He has not given the list price in his testimony at all, as I recall. But may I ask this, Colonel Anderson, because my impression is either right or wrong: He testified a moment ago that he had no knowledge with respect to certain costs and expenses save what he gathered from hearsay. What were the items which he was then referring to?

MR. ANDERSON: The cost of shop work after he went into the laboratory. He was about a year and a half in the shop itself.

THE COURT: Was that embraced in overhead?

MR. ANDERSON: No, sir; that is ordinary work in the shop, and shops service; daily work of chemists and laborers.

THE COURT: Was that item included in the approximate estimate that you gave on direct examination?

THE WITNESS: Yes, sir, it was.

MR. KRESEL: Novocaine estimate; is that your Honor's question?

THE COURT: Yes. So that that, Mr. Kresel,

does not apply to overhead. Your statement was based on a wrong premise, as I understand it. The witness says that what he referred to was not embraced in overhead, but was in one of the items the expense of which he gave in his direct examination. Does that change your views?

MR. KRESEL: May I ask the witness a question, because I haven't it clear in my own mind?

THE COURT: Yes.

By MR. KRESEL:

XQ. 419. Doctor, on Friday, you gave as an estimate of the cost of the experimental work or the research work on novocaine, I think you said about $35,000?

A. Yes.

XQ. 420. What did you include in that?

A. I included in that my estimate of everything up to the time that the manufacturing process was running smoothly; not only the actual research in the laboratory, but making a lot in the plant and perhaps losing 90 per cent. of it, and then making another lot and getting a better yield, and so on, until it was what we considered a satisfactory process.

XQ. 421. Did you or did you not in that item include overhead?

A. No. I did my best to eliminate all reference to overhead.

XQ. 422. As to the items that you did include in that $35,000, did you or did you not of your own personal knowledge know that those expenditures were made? And when I say of your own personal knowledge, I do not mean what somebody else told you.

A. No, I can not say that I did of my own personal knowledge because there were a considerable number of——

XQ. 423. That is sufficient. You do not need to

go on to the because. Now, how much of that $35,000 did you personally know had been spent? Give us your best estimate.

A. My best estimate would be a very rough one, Mr. Kresel, because I tried to check up those figures before I came here, and did not know that I would be asked to segregate them. So that it is a lump sum. The greater part would certainly be involved in research.

XQ. 424. Let us take the question of salaries of the men. Do you know of your own personal knowledge what was paid in salaries?

A. I do.

XQ. 425. What is your best estimate of the amount that was spent on salaries?

THE COURT: Mr. Kresel, is that not more redirect?

MR. KRESEL: I am perfectly willing to stop now.

THE COURT: What have you to say as to the motion now pending?

MR. KRESEL: I do not think that the evidence has been shown to be grounded purely on hearsay and that, therefore, the motion should be denied. If counsel will develop what I am trying to develop now as to how much of this——

THE COURT: Is there not this question: We have a lump sum made up of a number of items. Now then, as soon as it is established that one item of uncertain amount is involved, does it not in effect destroy any evidential value that the lump sum may have?

MR. KRESEL: No. I am sorry that I have to differ with your Honor. It does not entirely destroy the evidential value of it. It may impair it, and that is what I was trying to develop by my

examination now, and I shall reserve that for my re-direct; but I think that the motion is premature.

THE COURT: It does not destroy all of it; that is, there were some parts of the $35,000 as to which he says he knew of his own knowledge; but as it now stands, I do not know whether those parts as to which he knows of his own knowledge aggregate so much as one hundred or a thousand dollars.

MR. KRESEL: Quite right, and it seems to me that when both sides rest with this witness is the time when your Honor can intelligently pass upon the motion.

THE COURT: Then we will let it stay under the general rule, Colonel Anderson. I have indicated my views. We will take our morning recess at this point.

(A short recess was then taken by direction of the Court.)

XQ. 426. Doctor, I believe you said there were 35 men employed in the shop chemical work of the Abbott Laboratories while you were there?

A. I do not believe I said that, Colonel. I think I said from 25 to 30.

XQ. 427. How many different products were then under experimental investigation in this shop work approximately? I know you cannot remember the exact number.

A. Procaine, cinchophen, barbital—those were the three main ones at that time. Those were the three that were really giving us difficulty. The rest had been worked out pretty well before that.

XQ. 428. Pretty well before that, but are you not constantly taking up new products?

A. Yes, sir.

XQ. 429. With 25 or 30 men are you not constantly engaged in developing new processes in the Abbott Laboratories?

A. Yes, sir.

XQ. 430. And it is the same with regard to your research work; any matter in connection with the many products made by the Abbott Laboratories which arises, which gives as you call it, a rough place in its production is sent to the Research Department to be smoothed over, is it not?

A. Yes, sir.

XQ. 431. How many different products did you say the Laboratories made?

A. 1300. Of course, that includes every combination of products . Those are the pharmaceutical products that are sold.

XQ. 432. That are commercial?

A. That does not mean that we make that many products in the manufacturing plant.

XQ. 433. Those are the commercial products dealt in and sold?

A. Yes.

XQ. 434. If any question arises or any difficulty arises in connection with the production of any of those products or the testing of it, is it not sent in to the laboratory for such chemical action as may be required by your research chemists?

A. It is in the case of chemical products. Of course, we manufacture also biologic products with which the chemists have nothing to do.

XQ. 435. About how many chemical products do you manufacture?

A. I should estimate about in the neighborhood of fifty important ones. By that, I do not mean the combinations as they are sold, but I mean the actual chem-

ical products which are manufactured in the plant, which are distinct products.

XQ. 436. Any of those matters coming to the office, I mean into the chemical department, are handled by your five research chemists, are they not?

A. Yes, sir.

XQ. 437. And if they go into the shop department for experimentation or development, they are handled by your twenty-five or thirty chemists, are they not?

A. Yes, sir.

XQ. 438. Now, Doctor, if you knew the salaries of each of these men, how would you apportion the salaries of these men among the various products which are investigated or under research?

A. Of course, some of the men spend all their time on a product. That is particularly true of the workmen. Then there may be one or two or three, as the case may be, chemists assigned to that job who for a certain period will spend all their time on that alone. Then the rest of the time, of course, would have to be apportioned according to the estimated period that the man put on it. For instance, a plant manager might——

XQ. 439. That is overhead, is it not?

A. It depends on how you class it.

XQ. 440. Suppose something were to come in and a man was working on one thing and it was necessary to get some test or chemical work done on another at once; would you hesitate to call him and put him on the other one, the urgent one?

A. Yes, if it is a research problem.

XQ. 441. You would put him right on it, would you not?

A. Yes.

XQ. 442. Now, Doctor, can you say of your own knowledge how the work and time and compensation of these chemists was apportioned by the Abbott Lab-

oratories among the various branches of research being carried on, to each different product, I am not asking you what you have been told or from the books, but do you know of your own knowledge? Have you divided up that cost among those various products?

A. No, not necessarily the way it stands on the books.

XQ. 443. I thought you hadn't. That is a matter of accounting, is it not?

A. I would like to make a qualifying statement and that is what I know is about the time that each chemist or a certain number of workmen spent upon a certain process; and if they spent their entire time on it, I know that all that would be charged to that particular product.

XQ. 444. You do know that, How do you know that? How do you know it would be charged to that partcular product?

A. I know that is the system carried out by our company.

XQ. 445. In other words, that would be what you gained from the accounts, would it not, as to their method of charging?

A. I never entered it, so I could not say I put a figure down for procaine myself when I did the work.

XQ. 446. And even as to the amount of time spent if you were in the research laboratory and these chemists were working in the shop, you would have to estimate that would you not? You would not know what they were actually doing. You would have to estimate it, would you not?

A. Yes.

XQ. 447. In other words, if you were busy in the research laboratory, you could not act as timekeeper in the shop, could you?

A. That is true.

XQ. 448. Do you know the amount of product which was produced by the Abbott Laboratories? I am now speaking of novocain. And do you know the amount that was actuallly disposed of during this period of experimentation?

A. No, I do not.

XQ. 449. Is it not true that in all chemical or other factories of that nature, during the period of experimentation, a good deal of material may be produced which is of commercial value?

A. That is true.

XQ. 450. You do not know how much was produced of novocain during this year or more that you said it was in its experimental stage do you?

A. No, I do not.

XQ. 451. You would not know?

A. No.

XQ. 452. Now then, you do not know of your own knowledge what it was sold for, do you?

A. I do not remember.

XQ. 453. And you do not know of your own knowledge what was done with the proceeds of this product sold, assuming it to have been sold, do you?

A. Not to my knowledge, no.

XQ. 454. I believe you testified that so far as you knew there was no lack of intermediates in this country in 1919?

A. For what?

XQ. 455. For novocain. I am speaking of novocain.

A. So far as I know, yes. I do not know about it because we were not operating under that patent.

XQ. 456. You do not know whether there was or was not?

A. No.

XQ. 457. Your testimony as to lack of intermedi

ates related to 1917 and 1918, during the period of investigation, did it?

A. Yes; 1916 to 1918, I should say.

XQ. 458. 1916 to 1918?

A. Yes, sir.

XQ. 459. I will ask you to look at that bottle and state if that is a package of novocain or procaine put up by the Abbott Laboratories.

A. It is.

XQ. 460. You are familiar with that type of package, are you?

A. I am.

XQ. 461. I read the label on the bottle as follows: "One ounce procaine." Will you read that so that the stenographer can record it?

A. Para - aminobenzoyldiethylaminoethanolhydrochlorid.

XQ. 462. Go ahead and read the balance of it.

A. List No. 1173, made under license No. 9 from the Federal Trade Commission, under United States letters patent No. 812,554.

XQ. 463. That is signed "The Abbott Laboratories, Chicago" on that label?

A. Yes, sir.

XQ. 464. And that is the label that you are putting on procain or novocain, the same stuff that you are now selling?

A. Yes, sir.

XQ. 465. And you are putting the label on that which you are manufacturing under the Federal Trade Commission license, under letters patent No. 812,554; that goes on all procain or novocain manufactured by the Abbott Laboratories, does it not?

A. Not any more, I think.

XQ. 466. When was this made?

A. I do not know.

XQ. 467. When did you stop putting that on?

A. I do not know. The reason I say that is that the patent has run out now.

XQ. 468. But you did as long as the patent lasted?

A. So far as I know. I do not know that I paid much attention to the label.

XQ. 469. You mean patent No. 812,554?

A. Yes.

XQ. 470. The patent ran out in 1923, did it not?

A. Yes, in February, 1923.

XQ. 471. Up to that time this was the label you used, as far as you know; I mean that the Abbott Laboratories used as far as you know, on procaine or novocaine manufactured and sold by them?

A. So far as I know.

XQ. 472. Now, Doctor, in regard to this novocain or procaine product, you were asked by counsel a couple of hypothetical questions, long questions, do you recall?

A. Yes.

XQ. 473. And among the conditions assumed by that question, it was stated that the owner of the patent or purchaser of the patent would be obligated to three things: (1) To give a free license to the United States to manufacture this product or have it manufactured for its own use; (2) would be obligated to issue non-exclusive licenses under said patent to any qualified American citizen; and (3) would be obligated to defend the patent and never have any more than six per cent return on its investment. You took into consideration those three elements when you answered that question, did you not?

A. I tried to.

XQ. 474. You took into consideration each of these three elements when you answered it, did you not?

A. Yes.

XQ. 475. Assuming the absence of the element of

obligation to give a free license to the United States, to manufacture or have manufactured for its use, this product, and the absence of the obligation to give free licenses—I mean to give licenses to any qualified American manufacturer or American citizen, would that affect your ansyer in any way?

A. The only one that is left then is that there were three Federal Trade licenses oustanding.

XQ. 476. That is part of that. Please suppose I read the entire question to you—I do not want to take up your time, Doctor, based upon your general knowledge of the drugs and their manufacture, and your knowledge of the patents on novocain, which you have before you, and about which I gave you the number, the experience in attempting to produce under it that you have described; the lack of intermediates necessary for the manufacture of the product according to the specifications in the patent; the fact that the patent had only four years to run; the fact that the Abbott Laboratories were then producing the product, novocain, by a new method, not described in or covered by the patent, the fact that there were three Federal Trade Commission licenses outstanding, under which others were manufacturing the product, what in your opinion was the patent worth to a purchaser who by the terms of the sale to him would have been under obligation to give to the United States free licenses to manufacture said product, or to have it manufactured for its own use, which would be obligated to issue non-exclusive licenses under said patent to any qualified American citizen and would be obligated to defend the patents, and never to have any more than 6 per cent. return on his investment. Now, I have eliminated the assumed obligation to give a free license to the United States, and the assumed obligation to give licenses to any qualified manufac-

turer and left him with three Federal Trade licenses in the circumstances——

A. And the obligation to defend the patent——

MR. ANDERSON: I am coming to that in a minute.

MR. KRESEL: Are you leaving out everything else?

MR. ANDERSON: I am leaving everything else in but those two points. I am eliminating for the purpose of this question—just wipe out the assumed obligation to give to the United States a free license, and assume the obligation to license any manufacturer, and leave it with your right to the patent only subject to the three licenses stated, and the other conditions mentioned in the question, would that modify your answer?

THE WITNESS: It might to a slight extent.

XQ. 477. It might to a slight extent. Now then, I will take the next one: Assume that the purchaser of the patent had the right to issue licenses under the patent, or not issue, that in his judgment was to his best interest, and assume that he had a right to fix the terms of the license, or to cancel the same in his discretion, would that modify your answer, leaving the other conditions as they stand?

A. It probably would to some extent.

XQ. 478. It probably would. Now, I will ask the next point: Assume at the time that the purchaser purchased these patents, this novocain patent, rather, there were three outstanding Federal Trade Commission licenses, and the purchaser would have the right, after peace was signed within one year, to go into Court, and have a fair license fee established for the remainder of the life of the patent, or if no money had been spent in the development of the business, to have the licenses cancelled, would that modify your answer, leaving the other conditions in the question?

A. That is now leaving everything out except that?

XQ. 479. That is, his right to go into Court, and have those licenses either cancelled, if nothing had been spent under them, but if anything had been spent under them, establish a fair and reasonable license fee by a Court?

A. Yes, it probably would. Each of these factors undoubtedly has a bearing, and each of them would have to be taken into consideration in placing a value to be given to the patent.

XQ. 480. Now, I will ask you another question, when the question was predicated and put to you there, you said the patent would be a liability instead of an asset; if the owner of the patent or the purchaser had the right to fix terms and conditions of the licenses and to cancel the licenses at will, then that would not be a liability would it?

A. You mean had to give a license, leaving everything else in—I want to understand the question.

XQ. 481. I am taking this question: Assuming all the facts stated in that question, except this, that there was no absolute obligation on the purchaser to give licenses, and further that if he did give licenses, he had a right to fix their terms and conditions, and to terminate them at will, then what would be your answer to that question?

A. It might still be a liability.

XQ. 482. In what respect?

A. Depending on the other factors.

XQ. 483. All right; what factor creates a liability; will you take the question in the record and point out to me the factor that creates a liability on the owner of that patent?

A. What page is that on?

XQ. 484. Page 3263 of the record.

A. In the first palce, the fact that we found it

difficult to produce the novocain under the patented method.

XQ. 485. All right. I will stop there. Was there any obligation on you to produce novocain?

A. There was to a certain extent, at first.

XQ. 486. In what respect?

A. As the Government was very insistent and very anxious to have us produce it.

XQ. 487. Now, was there any obligation on your part to produce it, if you could not produce it in a satisfactory manner, as you state there?

A. Oh, no.

XQ. 488. All right. Then there is no liability on that, is there; there can not be a liability without an obligation, can there?

A. There could to this extent: Our experience had been gained at a certain cost, and that experience itself constituted a liability. We had spent money on it.

XQ. 489. If you had bought this patent in 1919, would the purchase of the patent have increased your liability, or if it had been transferred to you without any additional payment?

MR. KRESEL: Without any additional payment for what?

MR. ANDERSON: For all the patent.

MR. KRESEL: In other words, you are assuming a gift was made of it.

MR. ANDERSON: I will put the question this way, to meet Mr. Kresel's view——

XQ. 490. Let us assume that in April 1919, you bought this patent for $41.72, would the patent have created any liability on you?

A. It would have had a liability of $41.72.

XQ. 491. That is all is it not?

A. At least that.

XQ. 492. That is all you had already spent, this money you speak of, in experimentation?

A. Yes.

XQ. 493. It would not create that liability would it?

A. That is right.

XQ. 494. Then let us take the next one and point out what the liability was which the patent created, or the ownership of the patent would have created

A. I consider the fact that the patent had only four years to run might constitute a liability for this reason—may I explain?

XQ. 495. Certainly.

A. After the end of four years, a considerable number of other manufacturers might have come in, who, if I owned the patent and were manufacturing under it, might wipe out my business, and wipe out all the profits that I had made thereunder. You see my point?

XQ. 496. I see, in holding on. Let me ask you a question. You did not have to manufacture under the patent, if you owned it, did you?

A. No.

XQ. 497. Well then, there is no liability to create the profits or to have them wiped out, was there?

A. No, I presume not.

XQ. 498. Then your argument all drops through does it not; there is no liability on the patent as the result of the ownership of the patent?

A. Not on the patent.

XQ. 499. That is all you are talking about now. If you chose to manufacture and lose money, the patent was not responsible for it. Now, let us go ahead and find the next liability in it.

A. We would be obligated to defend the patents.

XQ. 500. Well, you did not have to defend them unless you licensed them or used them, did you?

MR. KRESEL: What has that got to do with defending them?

A. I do not know. That is a point of law.

XQ. 501. Suppose you just owned it and did not use it yourself, and did not license it, there would not be anything to defend?

A. Might you not have to defend your ownership?

XQ. 502. Defend your ownership, yes, but suppose you were not using it or licensing it, what did you have to do with the ownership? You could let the man take it away from you, if you wanted to, and lose your $41.72?

A. There again it would constitute a liability.

XQ. 503. That would be, then, the limit of the liability to defend in your view—would be $41.72, whatever it cost?

A. Of course, you might want to hand it back.

XQ. 504. But there would be no liability by virtue of the ownership of the patent unless you chose to defend it or to license it?

A. So far as I know.

XQ. 505. Let us take the next basis of liability.

A. That is all there is to it.

XQ. 506. Now, that is all that you meant when you said it would be a liability, is it?

A. Yes, sir.

XQ. 507. Now I will ask you a question assuming certain facts. I believe you stated that you continued to manufacture under the Federal Trade Commission license until this patent expired; did you not?

A. I believe that is true.

XQ. 508. At the Abbott Laboratories. I believe that you stated the novocain or procaine made by the use of the intermediate, substitute intermediate covered by the Adams patent, was novocain or procaine as described in the German patent—it is the same article?

A. That is true.

XQ. 509. And you stated that was a product patent, and therefore whatever was manufactured by either process was subject to that patent?

A. That is true.

XQ. 510. If I state to you that this patent was to be sold early in 1919, and the royalties earned under three Federal Trade Commission licenses in the year 1918 were $16,532.98, that the patent had four years to run or four and a half years to run, on a drug which was in universal use, as you said, throughout the world, like novocain, would you think that the patent, with the right to receive these royalties under these licenses and your right to license it to anybody else as you saw fit, would be of value?

MR. KRESEL: So far, your Honor, I have not made a single objection to any questions put to this witness. But the assumption of facts now in the present question is not borne out by the evidence, and therefore I must object to it. If counsel will say that, notwithstanding it is not in evidence, he wants this witness to assume those facts, I shall withdraw my objection, because I do not want to interpose any objection to the examination of this witness.

MR. ANDERSON: If counsel will indicate what fact included in that question is not in the evidence——

MR. KRESEL: I will indicate it to you.

MR. ANDERSON: I will be glad to say that it is either in or I will have it in.

MR. KRESEL: In the first place, there is no evidence that any $16,000 was collected; in the second place, there is no evidence that the purchaser is entitled to the $16,000. The Government itself is denying the right of the purchaser to that $16,000, if it had been earned, in these various suits that have been instituted. The Ger-

man is claiming it, the Chemical Foundation is claiming it, and the Government says it is claiming it.

MR. ANDERSON: If your Honor please, we have put in statements here, and these figures are taken from the statements and the evidence, as I am informed—I did not make them up—of the amount of earnings during the period of these licenses under the Federal Trade Commission and the amount of the earnings after the transfer under these licenses. The figures for the year 1918 are novocain under the three licenses which the witness has described, amounted to $16,532.98, which is in evidence.

Leaving out the question for the present as to who was entitled to the accrued royalties under the terms of this sale, up to the date of sale, and taking those as continuing licenses, which has been the basis of the hypothetical question here, I ask this witness to assume that the purchaser of the patent would be entitled to the royalties from the date of the purchase only, and I left out the royalties prior to the date of the purchase because that is a question that has not been determined in this case and is debatable. I asked him also to assume that he was entitled to whatever royalties were paid subsequent to the date of the purchase and for the last year under those various licenses, without any more licenses, these three licenses had earned $16,532.98. I asked him assuming those facts would he not consider the right to those accrued royalties, whether they were $16,000 or $18,000, $20,000 or $15,000, a value in that patent?

THE COURT: I am not sure that I understand you—your last statement whether he would not consider the right to accrued royalties.

MR. ANDERSON: No, I mean the right to receive royalties under those licenses.

THE COURT: That is different.

MR. ANDERSON: I beg your pardon, I did not realize that I had stated that.

THE COURT: Now I understand you.

MR. ANDERSON: I will make myself perfectly clear.

THE COURT: I understand you now perfectly.

MR. ANDERSON: A man who buys a patent may have an absolute right, unrestricted and unburdened. That is all right. Then he has a right to license anybody that he see fit, to use it, to manufacture or do anything. A man who buys a patent with certain outstanding licenses buys the remainder or, as it were, the residuum after those licenses, if they are non-exclusive and the right to receive the royalties arising under those licenses, with the right, if they are non-exclusive, to license additional manufacturers, or use them itself, and to receive additional royalties or the profits of his business. Therefore, I have predicated the question upon the fact stated in the question of counsel, that there were outstanding three Federal Trade Commission licenses which presumably would run for the life of the patent unless changed, that the patent would have four and a half years to run, or had five years in which to run——

MR. KRESEL: It had only four years to run?

MR. ANDERSON: That is right, yes, four years to run—that the purchaser had the right to issue additional licenses or to use the patent if he saw fit, as to which there is no question, during the period of the four years, and to receive any royalties which might accrue after the date of purchase on the outstanding license of the Federal Trade Commission; and assuming further

that the record shows in the last year before the sale those royalties under the three patents amounted to $16,532.98, I asked him would he not consider that a valuable property, whether he wanted to use it or not. I asked him that question, and all those facts are of record here, most of them included in the question of counsel.

MR. KRESEL: Counsel has not yet met the objection I made. First, so far as the $16,000 is concerned, I do not know of any such evidence or where it comes from. Counsel might point that out. Secondly, as to the right to receive the royalties, that very question is in issue and is now being litigated—not only the right to receive what had accrued before the sale, but the right to receive what has accrued since the sale.

MR. ANDERSON: We can not settle that here. I will assume that to be the fact and we will argue that later.

MR. KRESEL: That is it. All I am asking is to be told what it is you are assuming and what it is you claim to be the fact.

THE COURT: That injects a new factor. Let me see if I have it now.

MR. KRESEL: May I explain it, your Honor?

THE COURT: I think I have it; I am trying to see if I can state it. Colonel Anderson assumed that the purchaser would be entitled to royalties under the Federal Trade Commission license.

MR. ANDERSON: Yes, sir.

THE COURT: You suggest that there is nothing in the evidence to indicate that the title of the purchaser to such royalties would be unchallenged.

MR. KRESEL: Exactly. Quite the contrary, the evidence is the other way.

MR. ANDERSON: In my view, the evidence in

this case is—and the claim of the Chemical Foundation upon the record in this case, which they are estopped to deny, is they were entitled to receive those royalties from the date of transfer——

THE COURT: Then by your claiming them you are estopped to assert that they were entitled to them. So you are both estopped.

MR. ANDERSON: Then I will take their position, take the sale on the basis of their position, and ask what was the value, and I will argue the law questions when we come to them. I am perfectly willing to base my assumption on that and take my chances.

MR. KRESEL: May I suggest that the question be put now with all the assumptions, so that the witness may know what he is being asked?

MR. ANDERSON: With your Honor's permission I will put this hypothetical question as I think the evidence discloses it.

THE COURT: There is nothing to debate. Do you understand the question which you are now asked to answer, Doctor?

THE WITNESS: I would like to have it read again in order to get it clear in my mind.

THE COURT: Then let us have the question read.

(XQ. 510 repeated as recorded above.)

MR. ANDERSON: The question is subject to one objection. I intended to say the right to receive any royalties under these licenses from the date of transfer.

THE COURT: Then won't you reframe that question?

MR. ANDERSON: Yes, I will.

THE COURT: Because I do not see how it can be answered at all as it now stands.

MR. ANDERSON: I will be very glad to reframe it, sir.

XQ. 511. Doctor, assuming for your answer to this question that the novocain patent was to be sold in the spring of 1919; assuming the use of the drug as to which you have testified and which I will not repeat; assuming at that time that there were outstanding three licenses issued by the Federal Trade Commission on the basis of a five per cent. royalty on gross sales, which by their terms were non-exclusive and ran for the life of the patent, subject to review by the court within one year after the signing of peace; assume also that the royalties which were earned and accrued under these licenses for the year 1918, accrued under these three licenses for the year 1918, that being the last year before the sale, amounted to $16,532.98; that the purchaser at the sale would get the right to receive any license fees or royalties accruing from the date of his purchase to the termination of the life of the patent under the Federal Trade Commission license, also the right to use the patent himself in the manufacture of this product or to license any other users that he saw fit in the United States who were American citizens—assuming those facts in connection with the novocain patent, would you regard that patent as of value?

MR. KRESEL: Do you include the other conditions in the question, or do you want him to omit those?

MR. ANDERSON: I want him just to assume those facts.

A. Assuming those facts, and taking into consideration the doubtful things about that, for instance whether the court would uphold the royalty paid to the Federal Trade Commission, and also taking into consideration that there are no liabilities attached, that is, the purchaser would be under no compulsion

to do anything outside of what you have stated, of any sort, I should say they would be of some value.

XQ. 512. Now I will assume this fact: In addition to the facts stated in the preceding question, I want you to assume that those Federal Trade Commission licenses would continue for the life of the patent, and I want you to assume that the Court would not interfere with the licenses in any way, but allow them to stand as they were for the life of the patent, and assume the earnings under those three licenses for the last year I have stated, would you not then regard that patent as of very considerable value?

MR. KRESEL: It seems to me, your Honor, that that is a very violent assumption.

THE COURT: I do not see how that will help me, because if I were the purchaser of those patents in February, 1919, or April, 1919, the war not having been legally ended, would I not be taking my chances as to what the courts would do, and must we not look at their value from the standpoint of a purchaser then and not from the standpoint of a purchaser at the present time?

MR. ANDERSON: I am really testing this witness to see how he arrives at his values.

THE COURT: But your hypothetical questions, even for that purpose, I know to my sorrow must be based upon evidence.

MR. ANDERSON: Yes. Well, I am putting it on an assumed state of evidence.

THE COURT: But you can not.

MR. ANDERSON: All right, sir, I am perfectly willing to withdraw the question rather than have a discussion about its validity. But I want to answer your Honor's question.

The acts of the Federal Trade Commission are presumed to be valid and to be just and reasonable until they are set aside. The act of the

Federal Trade Commission in fixing a license fee of five per cent., which was the license fee provided by Act of Congress, with the right of the Federal Trade Commission to make it less, is certainly presumed to be valid until it is set aside by the Court on very clear evidence.

THE COURT: But how much financial assurance is there there that you would not have to litigate and that it would not be determined against you? It may be all right to indulge in a presumption of law of greater or lesser strength, first, that the Act of Congress in fixing five per cent. fixed that as an average or a fair and mean royalty and not a maximum royalty, and second, that presumption is strengthened by the fact that the Federal Trade Commission had no election in the matter—did it, under the Statute?

MR. ANDERSON: Yes, sir, it could fix the royalty at less if it saw fit; but it fixed that royalty at five per cent., and the Statute provided that if they had expended money in the development of the process, then the Court must fix the fair and just royalty for the remainder of the patent; in other words, if they had to spend any money at all, they could cancel the patent.

THE COURT: There is no evidence that the Chemical Foundation had spent any?

MR. ANDERSON: There is no evidence that the Chemical Foundation had spent any, but the evidence is that the Chemical Foundation was not a licensee. There is evidence that every licensee has spent money, and he would be entitled to continue his license on the basis stated.

THE COURT: If you want to state your hypothetical question based on those assumptions, I will rule on that; but there is no doubt in my

mind but that your hypothetical question as stated is not a proper one.

MR. ANDERSON: I will just withdraw it, because I am getting a little tired of it, and I do not need this gentleman to help me argue that when patents are bringing in $16,000 a year, they are worth money. If that is not conclusive, then I do not need his assistance.

THE COURT: That is for you to determine, Colonel.

MR. ANDERSON: Yes; I will leave it right there.

MR. KRESEL: The question is withdrawn, then?

MR. ANDERSON: That last question is withdrawn. The preceding one stands.

XQ. 513. I handed you just now that bottle giving the label. Can you say whether that novocain or procaine was made by the process employing the Adams patent, or made by the German process?

A. That was made by the Adams method.

XQ. 513. (continued) Adams patent?

A. Yes, sir.

XQ. 514. And you regarded the use of the Adams patent as being under the Federal Trade Commission License No. 9, of course?

A. Yes, because it is a product patent.

XQ. 515. Now I will ask you this: Do you think that fact, assuming it to be true, that Adams and Kamm had developed a process of manufacturing novocain or procaine, which you say was preferable to that stated in the German patent, but yet the product was covered by the German patent, would give to the German patent a value during the remainder of its life?

A. If you could get a hold of the Adams and Kamm patent and operate under it, certainly.

XQ. 516. It would give that value?

A. Yes.

XQ. 517. As a matter of fact, the Abbott Laboratories did get hold of it when?

A. Nineteen eighteen, I presume; some time in 1918.

XQ. 518. They had it in 1918 and you testified were using it in 1918 for the production of novocain?

A. Yes.

XQ. 519. And they held a Federal Trade Commission license?

A. Yes.

XQ. 520. Do you not think that increased the value of the patent, that they had a process which you say was better?

THE COURT: Colonel Anderson, do you press that question? It seems to me it is leading. I am not saying that in criticism of you in putting it, but I am only stating the impression that I gathered from it. Suppose I bought the novocain patent. Do you mean to indicate that the patent to which you referred would inure to my benefit?

MR. ANDERSON: No, sir; but if one of my licensees had developed a process by which he said he could make it cheaper and better than the process named in my product patent, and he admitted that whatever he made of it was covered by my product patent, and he had to pay a royalty to me for making it, I rather think that he would have increased the value of my patent very materially by doing it.

THE COURT: That is, if your patent were a basic patent——

MR. ANDERSON: Yes, sir.

THE COURT (Continuing):—and assuming that it was of the value of X dollars prior to this improvement, but the improvement increased the demand, that would inure in part to the basic patent

and that would necessarily increase the value of the basic patent?

MR. ANDERSON: I should say so, because otherwise the telephone patent would not have been any good. It was the improvements that made it worth anything; yet it made Alexander Graham Bell one of the wealthiest men in the United States.

THE COURT: I recognize your contention. He may answer the question.

MR. ANDERSON: I will ask to strike out the last question and frame the question anew.

XQ. 521. You have testified that about 1918 this Adams-Kamm patent or process or modification was developed and that the use of this intermediate covered by the Adams-Kamm patent improved the process and resulted in a larger yield and a better product of novocain under the German patent.

MR. KRESEL: Not under the German patent. He did not say that.

MR. ANDERSON: One minute, if your Honor please, he expressly stated that he manufactured under that patent until the patent expired and put it on the bottle.

MR. KRESEL: Don't get excited about it. He did not say any such thing.

MR. ANDERSON: Hold on.

MR. KRESEL: I will hold on. I will wait until you are through.

MR. ANDERSON: I do not want to have a question of veracity here between counsel, but I say that he testified and took this label and read it, and said that that was used until the patent had expired.

MR. KRESEL: He did; but that is far from saying that he testified that he manufactured under that patent; and you know perfectly well that he said he put it on there only because it is a prod-

uct patent, and no matter by what method of manufacturing it, he has to use that.

MR. ANDERSON: All right. We won't have any argument. It is too fruitless. Will you read the question down to where I have gone please? (XQ. 521 repeated)

XQ. 521. (continuing)—resulted in a larger yield and a better product than the novocain or procaine covered by the German product patent. Do you or do you not think that the development of the Adams-Kamm process, as you call it, or intermediate, the ownership thereof by a licensee under this patent and the use thereof by a licensee increases the value of the product patent?

A. I do not, for this reason: It might decrease it because if the licensee who was operating under the Adam-Kamm patent should for any reason agree to make over his rights under that patent to a foreign concern, that foreign concern might increase the competition so that the product, novocain, manufactured in this country under the original German method, might be worth less. That is, the patent itself would be worth less.

XQ. 522. Would not the product patent give to the owner in America the right to prevent the importation and sale of this stuff from foreign countries without paying a royalty?

A. I do not know.

XQ. 523. Now then, I will ask you this: Assuming that the owner of the so-called Kamm patent for the intermediate did assign it to a foreign producer, what right would it give to the foreign producer to manufacture outside of the United States, since this patent only applied to the United States?

A. You mean the Adams and Kamm patent?

XQ. 524. Yes.

A. It did not only apply to the United States.

XQ. 525. Can the United States grant a patent right outside of the United States?

A. No, but that method was patented outside of the United States.

MR. ANDERSON: One minute. If you are going to prove any patents outside of the United States, let us get them. I move to strike it out.

MR. KRESEL: I think that was responsive to the question.

MR. ANDERSON: It was not. It calls for a yes or no answer.

THE COURT: Let it be stricken out.

MR. KRESEL: I suppose the word "no" remains?

MR. ANDERSON: Certainly.

XQ. 526. If it appeared in evidence here that the owner of this German product patent had the right to charge a 10 per cent. or other royalty upon any of the novocain or procaine covered thereby which was imported into the United States, instead of five per cent. royalty on the manufacture in the United States, then your answer as to the assumed assignment to somebody else would fall, would it not?

A. You are assuming there that none is smuggled in.

XQ. 527. I have to assume that, because I assume the country enforces its laws.

A. I would answer that, Colonel, by saying that it depends upon how much cheaper the product could be manufactured under the Adams and Kamm patent than under the other method because a manufacturer under the Adams and Kamm method—I do not say that he can but he might be able to pay 10 per cent. royalty better than the other fellow can pay five per cent.

XQ. 528. Suppose you had a right to charge 25 per cent. royalty? Suppose you had a right to put up any royalty you wanted to at the port?

A. If it was imported it would put that much in the pocket of the man who gets the royalty.

Mr. Anderson: Well, we worked until we got it.

XQ. 529. Well, Doctor, when did the Abbott Laboratories purchase the Dermatological Institute?

A. November 1922, I think.

XQ. 530. What was your connection with that purchase, if anything?

A. I was asked in the first place what I thought of the product that they were putting out.

XQ. 531. What did you say?

A. I said I thought it was a fine product.

XQ. 532. You thought it was fine stuff?

A. Yes.

Mr. Kresel: Wait a moment. He had not finished.

XQ. 533. All right; what else did you have to do with it?

A. I was consulted as to whether it would be wise to purchase their plant and process or to purchase some other one that was available to us and there were a number of questions along that line. Whenever they related to the technical side, they were taken up with me.

XQ. 534. You never went to Philadelphia at that time?

A. No, sir.

XQ. 535. Do you know how much plant they had at Philadelphia?

A. I do.

XQ. 536. What was the size of the plant, do you know approximately?

A. They employed about 125 people and they had a good sized plant; a four-story building, I think.

XQ. 537. Do you know what the Abbott Laboratories paid for the Dermatological Institute?

A. I do not.

XQ. 538. You do not know what they paid?

A. No.

XQ. 539. You never went to Philadelphia until 1923, did you?

A. I did not, to see the plant.

XQ. 540. That is what I mean, you never saw this plant until then?

A. No, sir.

XQ. 541. In what business was the Dermatological Institute engaged when this purchase or sale took place; what were they manufacturing?

A. They were manufacturing arsphenamines mainly, although they were manufacturing a number of other products.

XQ. 542. What other products?

A. Mercurophen and chrysarobin were two of them.

XQ. 543. But chiefly the arsphenamines, which is another name for salvarsan, is that not true?

A. Yes.

XQ. 544. And neosalvarsan and associated drugs?

A. Yes.

XQ. 545. Do you know whether the Dermatological Institute kept records of their experiments and processes in the laboratory at Philadelphia in the development of their product called salvarsan?

A. Yes.

XQ. 546. They did?

A. Yes.

XQ. 547. Do you know who is in charge of those records today?

A. Yes.

XQ. 548. Will you please state his full name?

A. Dr. George W. Raiziss.

XQ. 549. He is in Philadelphia, is he?

A. Yes, sir.

XQ. 550. And do you know whether they kept accounts of the cost of their manufacture of this drug arsphenamine?

A. I do not, but I doubt whether they did in the early stages because they were operating as a more or less semi-public concern, a research organization, and not as a commercial organization.

XQ. 551. What do you mean by the earlier stages?

A. I mean from about 1912 on.

XQ. 552. Doctor, how do you know that?

A. I have been reading an article by Dr. Raiziss and by Dr. Schamberg which I have here.

XQ. 553. Well, hold on. You got it from that article?

A. Not entirely, no.

XQ. 554. Where were you in 1912 to 1915?

A. In Ohio.

XQ. 555. And you have absolutely no personal knowledge on the question of the Dermatological Institute, have you, during that period?

A. No.

XQ. 556. You have absolutely no knowledge of what was going on at the Dermatological Institute in 1916?

A. No, sir.

XQ. 557. You were then at Illinois?

A. I have no personal knowledge.

XQ. 558. You have no personal knowledge of what was going on at the Dermatological Institute in 1917, have you?

A. No, sir.

XQ. 559. You have no personal knowledge of what was going on there in 1918, have you?

A. No, sir.

XQ. 560. You have no personal knowledge of what was going on there in 1919, have you?

A. No, sir.

XQ. 561. You have no personal knowledge of what was going on there in 1920, have you?

A. No, sir.

XQ. 562. Or in 1921 or 1922?

A. No, sir.

THE COURT: It is time for us to suspend now and take our noon recess, but may I ask you or Mr. Knight this question purely for information and not as suggestive of anything except that I want to know what the patent law is on this and I always need help on that.

MR. ANDERSON: I refer to Mr. Knight on that, sir.

THE COURT: The question was brought to my mind by the label on the bottle. It said it was manufactured under one process but it was covered by the patent and there is certain testimony indicating that the patent is not workable; that is, that the process is impure. What is your view, Mr. Knight, about such a patent? I do not mean to have full argument, but I just want you to indicate to me what your view is about a patent of that kind.

MR. KNIGHT: I can give my view of it, of course. A patent must teach the public how to carry out the object of the patent. If it fails in that to at least some degree, it fails entirely. If, therefore, one has an improved product, let us say, and he fails to teach the public how that product can be made, to some extent, not necessarily in the best form, not necessarily in a commercial form, but to make it in a form which will carry out the purpose of that product, then I should say his patent fails.

Those considerations, of course, have had many illustrations that show the limitation of applying them. We are all accustomed to hear of

cases in which the defendant has shown that he has tried and tried in vain to make a thing, and as one Court has said, "it is easy not to make a thing. The difficulty is always in making it." The plaintiff always puts some one on to show not only that it can be done but that it is the easiest thing in the world to make.

Outside of that question of readiness of following the process, which is open to construction by many experts and many minds who are variously acquainted with equivalents and things known to those skilled in the art—a most elusive term in itself—we have the question of relative perfection of the operation that they do carry out, which is always difficult of application. A thing may be a success to maintain a patent and yet be an entire failure commercially, as of course your Honor knows. We have had many cases in which those carrying out the patent, the patentee himself indeed, have produced something which in the light of subsequent developments appears as a mere joke. What we did with the automobile twenty years ago does not seem possible for any one to have considered. What Bell did with his first patent, was a mere magnetic development of the current, enabling him with Sir William Thompson's assistance, to telephone to the length of the hall, in 1876, but that was nothing as a commercial instrument. It was a toy; but he had the principle there of impressing upon the current undulations, corresponding to the vibrations produced in the air by the human voice.

Having that principle successfully produced, even in its experimental form, it was held sufficient, and did prove sufficient to hold the entire telephone system, which subsequently has been improved by Blake and many others. This development,

this change, from a mere un-commercial experiment into a vast many hundred of millions dollar value, all enured in that sense, to the benefit of that slight experiment of Bell.

So we have had these cases, in which, in chemical lines, the product has been produced in quite an imperfect condition, and it needs subsequent purification but it has been produced, and it has shown the way. So far success has been attained. And those later developers who have improved that product and made it better, and shown how it could be made cheaper, and substituted some well-known equivalent as an intermediate, or what-not, they have been held to come under, providing the original thing could be isolated, and it can be said that that is the thing. It is not a matter of commercial success; it is not a matter of absolute success of any kind; but if the Court can determine, as I understand, the matter, that the world had been given this product by these experiments, and by this disclosure in the patent, then the original patentee is entitled to claim that product, however produced by other processes.

THE COURT: Is that true without regard to the degree of purity of the product?

MR. KNIGHT: I would say that was subject to considerable limitations if your Honor please.

THE COURT: That would be a question of fact.

MR. KNIGHT: Absolutely, yes.

THE COURT: I understand.

MR. KRESEL: May I just make one observation? Assuming that it is a drug, where the toxicity is of the utmost importance, is not that of value? That is a very important element, I would say.

THE COURT: I assume that would necessarily be true for obvious reasons. We will take a recess until 1:10 p. m.

AFTER RECESS.

MR. KRESEL: If your Honor please, if your Honor will permit, we would like to substitute for Defendant's Exhibit 87 a photostat copy thereof, because it is a record from the Alien Property Custodian's office which they desire to have returned.

THE COURT: Let it be substituted.

XQ. 563. Dr. Volwiler, do you know the amount of novocain or procaine, whichever you may call it, produced by the Abbott Laboratories in the year 1919?

A. I do not.

XQ. 564. Or in any subsequent year?

A. I do not.

XQ. 565. Do you happen to know the amount produced in the United States?

A. I can not recall it now. I did see a report on that, but I can not from my own knowledge now recall it.

XQ. 566. Do you know the gross revenues of the Abbott Laboratories from novocain or procaine in any year?

A. No, I do not.

XQ. 567. Of course, you would not know the net revenues either?

A. (No answer.)

XQ. 568. You spoke this morning of the process of purification of the novocain which you and your associates produced originally in your experimental work at the University of Illinois, was it not?

A. Yes, sir.

XQ. 569. You did go through the process of purification and produce novocain of the kind now sold, did you not?

A. We don't know, because at that time it was not tested for toxicity. We got some and it did not

seem to be satisfactory in appearance and yield and so we did not go as far as testing it out for toxicity.

XQ. 570. In following that process of purification of which you spoke you said that you re-crystallized and reduced it in the method you described. Without going through it, you followed only such methods as were well known to those skilled in the art, that is, chemists, in the United States, did you not?

A. I do not recall all the methods we did use. We used every method that we could find in the literature and any that occurred to us.

XQ. 571. But they were the methods recognized in the chemical science for purification of things of that kind, I mean the general method, was it not?

A. Oh, yes, we tried those things.

XQ. 572. In other words, to make it clear, you followed the process as defined in the patent which you have described, and I need not go over it in detail, down to the result which you described, as you did not feel it was a pure product, and then you followed in purification, methods in common use and known to the science of chemistry for the purpose of purifying that product to a condition where it was useful for the medical science, that is, generally it?

A. Yes, sir.

XQ. 573. Now just before adjournment, I had asked you of your knowledge of the work of the Dermatological Laboratories of Philadelphia in the making of salvarsan and neosalvarsan and their kindred products, that is, that you described in your direct testimony like silver-salvarsan and things of that kind. On your direct testimony, as I recall, you stated that they did not follow at the Dermatological Laboratories the process outlined in the salvarsan and neosalvarsan patents, the numbers of which appear in evidence here. Will you please state in what respect, out of your own

knowledge, not from hearsay, they varied the process as defined in the patent?

A. In the first place the intermediates that are used in making our arsphenamines are difficult to make, and the method that they follow there was different from that given in the patent, and in the second place the purification at various stages——

XQ. 574. Would you let me have the patents?

A. The neosalvarsan and salvarsan. (Handing papers.)

XQ. 575. Now, Doctor, did you ever make any salvarsan yourself or neosalvarsan?

A. Not the final product. I only ran some of the intermediates.

XQ. 576. Do you mean by running some of the intermediates that you made yourself some of the intermediates used in the process of the making of salvarsan or neosalvarsan?

A. I do.

XQ. 577. You did not undertake to combine the intermediates through chemical processes to produce the final result?

A. No.

XQ. 578. You have never made any yourself?

A. No.

XQ. 579. I understood you to say that you had never been at the Dermatological Laboratories until January, 1923?

A. That is true.

XQ. 580. Therefore I take it you would say that you had no personal knowledge of what was done at those laboratories prior to 1923, of course?

A. I did, from the literature which had appeared——

XQ. 581. I mean your personal knowledge?

A. No, not by personal contact.

XQ. 582. Will you please take this patent No.

986,148, which you hand me as the patent to Paul Ehrlich covering what is commonly called salvarsan and state whether it covers a process or product?

A. It is a product patent and also covers the processes.

XQ. 583. It is both process and product then, is it?

A. Yes.

XQ. 584. I will ask you to take that patent, if you desire it, and state just what was the process provided by the patent and the particulars in which the process used by the Dermatological Institute varied from the patent and where, following it as you did in the novocain patent this morning.

A. The thing that I remember about the first part of the process is that arsanilic acid, which is the first step in the manufacture of the arsphenamines is not described as to method of preparation here. To obtain arsanilic acid in the pure form and in a good yield is a difficult thing. As a matter of fact, in the production of arsanilic acid, if it is run according to the way it is ordinarily given in the literature, you may get only three per cent. of the theoretical amount of material that you should get.

By Mr. Kresel:

Q. 585. You mean it is not described in the patent how to make it?

A. No, it is not described in the patent how to make it.

By Mr. Anderson:

XQ. 586. Arsanilic acid, which you mention, is one of the intermediates used for combination in the process of making this stuff?

A. Yes. It is practically the first intermediate that is used. Of course, it is built up from anilin but it is the first important intermediate that we use.

XQ. 587. Arsanilic acid is not a patented product, is it, in any sense?

A. No.

XQ. 588. It is a product the manufacture or making of which is well known to those skilled in the art, is it not?

A. Not in this country.

XQ. 589. Well, do they make any arsanilic acid in the United States now?

A. Yes, they do.

XQ. 590. Did they not do it in 1919?

A. Surely, they made it. They used it in making the arsphenamines.

XQ. 591. Did they in making it in 1918?

A. Yes.

XQ. 591a. And it was a product which was not covered by any patent but was produced by a combination of certain chemicals known to those skilled in the science of chemistry, was it not?

A. The chemicals were known, yes.

XQ. 592. And it was merely a matter of combining those chemicals to produce arsanilic acid?

A. In the right way, yes.

XQ. 593. Yes, that is right? The arsanilic acid could be produced, could it not, by a chemist?

A. Yes.

XQ. 594. Take the patents, and beginning with arsanilic acid and whatever else is used, state the first combination of chemicals in the making of salvarsan.

MR. KRESEL: The other question is not completely answered, is it?

MR. ANDERSON: Yes.

MR. KRESEL: You started in by asking him to point out in what respects the method followed by the Dermatological was different from the patent.

He gave one. All I want to know is whether that is all there is.

XQ. 595. We have taken a lot of intermediate questions and answers, so I will vary the question by asking you to take the first one. I said "As we did this morning." You did not understand me, so we will take the first one, the first combination in making salvarsan, and we will get rid of that, then take the second one. We will go down the line until we get salvarsan, so you may know what I am driving at.

A. All right. Aniline is the first product to start with, aniline and arsenic acid.

XQ. 596. Aniline is something that is known to the art, is it?

A. Yes, that was obtainable on the market.

XQ. 597. You took aniline and arsanilic acid——

A. Arsenic acid.

XQ. 598. Yes. Arsenic acid—and what did you get?

A. Arsanilic acid.

XQ. 599. You got arsanilic acid as the result of the combination of those two?

A. Yes.

XQ. 600. With arsanilic acid produced in your process, what was the next step in the making of salvarsan?

A. The next step is the production of the first intermediate they start with here, para-oxyphenylarsinate.

XQ. 601. Was that the intermediate you desired to combine with the arsanilic acid that you produced?

A. No, you start with the arsanilic acid then and go on, and by further chemical reactions you get para-oxyphenylarsinate.

XQ. 602. What do you combine with arsanilic acid in order to get that second thing you mentioned there?

A. Nitrous acid.

XQ. 603. What is nitrous acid?

A. Nitrous acid is not purchasable on the market. You would buy sodium nitrite and treat it with an acid and you get nitrous acid right in your reaction mixture. You do not have to make it and isolate it. You make it right there and use it up as you make it.

XQ. 604. That is a matter of common knowledge among chemists and others learned in the art, how to make that stuff?

A. It is a common reaction that is used, yes.

XQ. 605. So you buy those elements that you speak of as making up nitrous acid and you combine those with your arsanilic acid, which is your first reaction on your process, and out of the combination of those two what do you get?

A. You get paraoxyphenolarsenic acid.

XQ. 606. Now that is your second stopping point, as it were. Now you take this para-other things that you mentioned, and what do you combine with that in your next step in the making of this stuff?

A. You nitrate it with nitric acid and sulphuric acid.

XQ. 607. Now, nitric acid and sulphuric acid are products of common use in the chemical field, are they not?

A. Yes.

XQ. 608. And can be obtained anywhere?

A. Yes.

XQ. 609. And your second reaction, para-whatever the name was, combined with nitric acid and sulphuric acid produces what?

A. The nitro derivative of this compound which I last mentioned, paraoxynitrophenolarsenic acid.

XQ. 610. That is a nitro derivative?

A. That is a nitro derivative.

XQ. 611. Now you have gotten to the fourth step in the making of this stuff. Let us take the next step. What are you bringing into this combination next?

MR. KRESEL: Colonel, may I interrupt you a minute? Is he telling you now how to make it under the German patent or how the Dermatological made it?

MR. ANDERSON: I asked him to follow that German patent and tell me how to make it under the German patent.

THE COURT: That is what the German patent calls for?

THE WITNESS: Yes.

MR. ANDERSON: He has got the German patent in his hand and he is following it.

THE WITNESS: Although due to some of these questions and the fact that we started out from the beginning, I had to put in some extra information that is not given in the patent, in order to get the starting point of the patent.

XQ. 612. All right; what is the extra information that you have put in that is not in the patent?

A. The production of arsanilic acid, and from that the production of paraoxyphenolarsenate.

XQ. 613. Now you have described what you put in. What does the patent say?

A. The patent just starts out with paraoxyphenolarsenate. You have to get that some way or other to run this patent through. No matter how you get it, if you get it, why then you can start in and start operating under this patent.

XQ. 614. In other words, you go into your laboratory and you make this arsanilic acid, which is not a patented process at all, but is a chemical process known to those skilled in the art; then you combine it with certain other well-known chemical materials——

A. Reagents.

XQ. 614. (Continued.)—like acids, that you described there, and you get the para-whatever it is as a result of that beginning. Now, up to that point there is nothing patented at all, is there?

A. No, not as far as I know.

XQ. 615. That is an open chemical process. Now then, after you get to that point, you follow by putting in nitric acid and other things. Read from that language, will you please?

A. "The procedure for preparing the new compounds may, for instance, be as follows:" (Reading from line 33 to 41 of the patent.)

XQ. 616. Now stop there one minute. That is what you mean by putting in nitric and sulphuric acid with the other combinations?

A. Yes.

XQ. 617. You were following that patent?

A. Yes.

XQ. 618. Now then, when you got those together, what did you get?

A. You did not get any product that you have isolated that you can handle in solution there, though in suspension you have a nitric.

XQ. 619. Go ahead. The next step after that, what did you do?

A. "While continuing the stirring—" (Reading from patent, line 42 to line 59.)

MR. KRESEL: I hope the record will show that the witness is just reading from the patent.

XQ. 620. Yes, it is understood. I will ask him to read.

A. (Reading from the patent from line 59 to line 80.)

MR. KRESEL: Colonel Anderson, can not we save this reading; what is the use of reading all that?

XQ. 621. I want to get the process. Have you finished reading?

A. Well, it describes what the——

MR. ANDERSON: I am perfectly willing for the witness to say that he read the process set forth in the German patent.

THE COURT: Where is that from?

THE WITNESS: That is lines 34 to 80.

MR. ANDERSON: Instead of copying that, the record can show the witness read from line 34 to line 80.

XQ. 622. Now, what did you get as the result?

A. We got a powder, which in many instances——

MR. KRESEL: You mean what is claimed to be gotten by the patent ?

MR. ANDERSON: No, I am asking him now—he testified that he knew about making this stuff, and I want to ask him what he got as the result.

THE COURT: As I understood you a minute ago, you were asking him for the process of the patent.

MR. ANDERSON: Yes.

THE COURT: Are you asking him for what he got when he followed the process of the patent?

MR. ANDERSON: What he got when he followed the process of the patent.

XQ. 623. Did you do it yourself?

A. No. That is just what I want to state. I never got as far as this, that is dihydrochlorid.

XQ. 624. How far did you go, Doctor?

A. I went through the arsanilic step, and then I omitted several steps, and made some of the intermediates. Further on we used other products in there, in addition to the products here stated.

XQ. 625. But you really have never made salvarsan yourself?

A. No.

MR. KRESEL: He said that two or three times.

MR. ANDERSON: Hold on, Mr. Kresel. I am trying to get it perfectly straight here—I may be very stupid.

THE COURT: Go ahead.

XQ. 626. Now, do you know of your own knowledge, not from hearsay, in what respect, if at all, the Dermatological Laboratories varied the process defined in that patent which you have just read?

A. I do in certain respects, but I can not point them all out, because in the first place I have not their directions here, and it may be a long process, and I can not remember all those things; and in the second place, because if I did not have the apparatus here before me, and say that this part is required for this purpose, I could not explain it.

XQ. 627. Now, Doctor, have you ever tried to make salvarsan yourself under the Dermatological Laboratory method, assuming that that varies from this in any respect?

A. No, I have not, although I have made some of the intermediates.

XQ. 628. You have made some of the intermediates?

A. Yes, sir.

XQ. 628a. Now, what do the Dermatological Laboratories sell, or what do they get as a product, when they make this stuff up, according to what you say to be the varied process?

A. They get the product which purports to be described in this patent.

XQ. 629. They get neoarsphenamine?

A. Neoarsphenamine, depending on what they want. There are two different patents.

XQ. 630. Now, it is the product described in the product part of that patent?

A. Yes, sir.

XQ. 631. It is the same thing?

A. Yes.

XQ. 632. Neoarsphenamine and salvarsan are the same thing?

A. Neoarsphenamine and arsphenamine are not as definitely known as far as their chemical characteristics are concerned, as most organic compounds. Most organic compounds have a definite melting point and a definite solubility and arsphenamine on the other hand does not necessarily have a definite solubility. Take different brands, you can not say that either one is not arsphenamine, and yet one will dissolve in the course of half an hour if you do not shake it, and the other one may dissolve in fifteen seconds. There is no melting point that you can get on it. As mentioned in this patent, there is no melting point. Practically the only criteria that you can go by is whether the reactions that you carried out are supposed to lead to that result, and that is pretty definite; and what effect the product will have, whether it is efficient as an anti-syphilitic, whether it has a certain low toxicity and so on; so that the point I want to bring out is that it is not as definite as most organic compounds.

XQ. 633. But it is sufficiently definite for you to say that it is the product substantially that is covered by that patent?

A. Yes.

XQ. 634. And it is so recognized by the Dermatological Laboratories of which you have spoken, is that true?

A. I have never heard anything to the contrary.

XQ. 635. In order to shorten the examination, without going through the details, neoarsphenamine is simply a modification of the arsphenamine and corresponds to neosalvarsan in the German nomenclature, does it not?

A. Yes.

XQ. 636. Just as arsphenamine corresponds to salvarsan?

A. That is correct.

XQ. 637. In the making of neoarsphenamine, could you, abbreviating your answer as much as you can, take the patent and tell me in what respect, so far as your own knowledge goes—if you have no knowledge say so—the process you claim is being used by the Dermatological Laboratories varies from that patent, telling me first the patent and the exact point on which it varies?

A. I can not do that either without referring to the directions which they follow and without reference to the apparatus employed.

XQ. 638. But the neoarsphenamine which they produce is the product covered by this patent, reissue No. 13,848, is it not?

A. It is generally assumed to be. There again there is a question as with arsphenamine.

XQ. 639. There has never been any question raised that it is substantially the same product and intended to be the same product?

A. No. It has been shown that the Germans at that time did not have a thorough appreciation of what neoarsphenamine is. They thought it was one thing whereas actually it is a mixture of at least three things in most cases. That is the product that is ordinarily sold on the market. But in our ordinary conversation when we speak of neoarsphenamine or arsphenamine, we assume that we are referring to the same thing as what they call salvarsan and neosalvarsan.

XQ. 640. What you have said in regard to this manufacture by the Dermatological Institute, as I understand, is purely what you gather from their records and from conversation with those who have been there?

A. And from my personal observation.

XQ. 641. That was in 1923, however. I am talking about the manufacture prior to 1923?

A. Yes.

XQ. 642. I hand you here a package in a wooden case and would ask you to read the label on it, if you please.

A. Arsenobenzol arsphenamine. Shall I read the chemical name given there too?

XQ. 643. You can omit the chemical name and read the balance of it.

A. "Prepared under regulations issued by the Federal Trade Commission and conforms with tests approved by the United States Public Health Service. This package contains six-tenths of a gram of arsphenamine. Lot No. License No. Dermatological Research Laboratories."

XQ. 644. Philadelphia, Pennsylvania?

A. Yes.

XQ. 645. I take from that package the paper wrapped around the contents entitled "Dermatological Research Laboratories, Philadelphia Polyclinic, 1818 Lombard Street, Philadelphia, U. S. A." and would ask you to read the title to the first paragraph.

A. "Arsenobenzol. The arsenobenzol prepared by us is identical in all its essential properties with the German product marketed under the name of salvarsan. Extensive biological tests demonstrate that our product is uniformly of low toxicity. No preparation sent out which has not been successfully administered intravenously to rabbits and rats in seven to eight times the maximum dose per man proportionate of course to body weight."

XQ. 646. That, so far as you know, is a correct statement, is it not?

A. It is.

XQ. 647. I hand you another package on which is the name of the Dermatological Research Laboratories, entitled "Neoarsphenamine," and will ask you to read the label to that, if you please.

A. Neoarsenobenzol or neoarsphenamine.

MR. KRESEL: Why not put it in, instead of having him read it?

MR. ANDERSON: But I do not want the bottles to go in evidence.

MR. KRESEL: But the stenographer can copy that on the record without having him read it.

MR. ANDERSON: I know, but it is very short.

A. (Continued.) This package contains 0.9 grams of neoarsphenamine (a compound prepared from arsphenamine by means of formaldehyde-sulphoxylate) prepared under regulations issued by the Federal Trade Commission, and conforms with the regulations and tests prescribed by the United States Public Health Service. Then there is the license and lot number.

XQ. 648. I take from the package which you have just identified a paper wrapped around the contents, which I now show you, entitled "Dermatological Research Laboratories," with the address, etc., headed "Neoarsphenamine"—the first line thereof—"is identical in all essential respects with the compound originally prepared by Professor Ehrlich under the name of neoarsphenamine." Is that not a true statement, so far as you know?

A. It is.

Q. 649. And the preparation to which reference is made there, having been made by Professor Ehrlich, is the preparation covered by that German patent which I have just mentioned to you covering neosalvarsan?

A. That is true.

XQ. 650. Is it not a fact that the Abbott Laboratories themselves now put out neosalvarsan?

A. It is.

XQ. 651. I hand you a package entitled "neosalvarsan" and ask if that is the package put up by the Abbott Laboratories?

A. It is.

XQ. 652. I read the label as follows: "This package contains 0.9 grams of neosalvarsan, a compound prepared from arsphenamine by means of formaldehyd-sulphoxylate, and conforms with the regulations and tests prescribed by the United States Public Health Service. License No. 257. Lot No. 5434." Do you know what that license number is, what it refers to—what license?

A. No, I do not.

XQ. 653. I take from this package which you have just identified a printed paper wrapped around the contents, entitled "neoarsphenamine" and the first paragraph reads as follows: "Neoarsphenamine is identical in all essential respects with the compound originally prepared by Professor Ehrlich." It then goes on to describe the manufacture of this neoarsphenamine. So far as you know that is correct, is it not?

A. It is.

XQ. 654. And the compound there referred to is the compound prepared by Professor Ehrlich under this German patent I have just described for neosalvarsan, is it not?

A. In all essential respects, as there stated.

XQ. 655. The neosalvarsan patent to which I have referred you is a product patent also, is it not?

A. Yes.

XQ. 656. I hand you also a package marked arsphenamine, with the name of the Abbott Laboratories

printed thereon, and ask if that is the package put up by the Abbott Laboratories.

A. I doubt it. There is no name "Abbott Laboratories" on this. This is the Dermatological Research Institute, which was the name before the Abbott Laboratories took it over.

XQ. 657. Isn't the name Dermatological Institute there

A. No.

XQ. 658. I take from that package the paper wrapped around the contents, the first line of which reads as follows: "Arsenobenzol prepared by us is identical in all essential respects with the product prepared by Professor Ehrlich. The United States Government has adopted the name arsphenamine as the official designation of this compound." That is the same as salvarsan, as you said, and so far as you know that statement is true?

A. Yes.

XQ. 659. It is true, is it not?

A. Yes.

XQ. 660. As I read it from that advertisement?

A. Yes.

XQ. 661. Dr. Volwiler, in your direct testimony at page 3272 you were asked this question: "Q. 128. From such a study of the records as you speak of that you made, can you or can you not state whether the process followed by the Dermatological Institute that you have observed in the production of salvarsan and neosalvarsan is the process described in those records?" And you answered after some discussion, "It is not the process."

I would ask you again if you can tell me in what respects those processes differ?

A. I can not, not without reference to the records and the plant.

XQ. 662. And your knowledge on the subject is derived entirely from those records so far as the period prior to 1923 is concerned?

A. Yes. Not entirely; also from my observation.

XQ. 663. Well, you were never there prior to 1923?

A. Oh, I beg your pardon; I didn't get your qualifying clause. Yes, prior to that time, that is true.

XQ. 664. And you have those records available?

A. I have, yes.

XQ. 665. Can you produce them?

A. I can,——

XQ. 666. I would be glad if you would and return here with them.

A. I haven't them in the city, no.

XQ. 667. I would be glad if you could get them. They are in Philadelphia, aren't they?

A. Undoubtedly.

XQ. 668. I am very anxious to have you refresh your memory from that source, although I do not waive my objections to testimony of this kind, and point out wherein that difference lies, and if it is necessary for you to get your records for that purpose I will ask you to do it, since you have said it is a different process.

A. (No answer.)

XQ. 669. In answer to one question on your direct examination you said that the value of the patent upon the facts assumed in that question would be speculative and nominal, and in reply to a question as to what you meant, you said that by "speculative" you meant that a conservative or industrial concern would hesitate to purchase, or words to that effect. Doctor, have you ever purchased any patents; I mean yourself?

A. Only in connection with the company. I have

given advice as to whether a patent should be purchased or not.

XQ. 670. Have you ever yourself negotiated the purchase of a patent?

A. I have.

XQ. 671. What patent?

A. I should modify that; I do not know whether this method was patented or not, but I negotiated for the purchase of a method for the production of acriflavine, concerning which I gave evidence this morning. That would come under the German patent.

XQ. 672. What was paid for it, do you know?

A. I do not remember.

XQ. 673. You negotiated the purchase and do not know what you paid?

A. Yes; it covered not only a flat price but a royalty depending upon the amount of material produced for a certain period.

XQ. 674. What was the flat price; do you remember that?

A. I think it was $200 or $250.

XQ. 675. What was the royalty rate?

A. I do not remember that.

XQ. 676. Did you in fact personally negotiate that contract?

A. I gave advice concerning it. I did not sign the contract, no.

XQ. 677. To whom did you give advice?

A. To the president of the company.

XQ. 678. What other patents have you ever purchased or advised as to the purchase of, specifically?

A. That is the only one that I recall.

XQ. 679. Doctor, you were asked a hypothetical question as to the value of the salvarsan and neosalvarsan patents, and you stated that they would not, under the conditions named in that question, be worth anything, or they would be worthless, did you not?

A. Yes, sir.

XQ. 680. No; I was reading from the question and not the answer. You replied that you would consider it more a liability than an asset.

Now, I will ask you to take that question, 138 on page 3281 of the record and read it, and tell me wherein the liability rests.

A. (Referring to record.) One place, "that an American citizen then claimed to have a pre-war exclusive license from the German owners of the patent to manufacture the product in the United States during the life of the patents, the fact that the citizen of the United States then claimed to have a pre-war agreement with the German owners of the patents for the transfer thereof to said American citizen."

XQ. 681. You would regard that as imposing a liability upon you, would you?

A. I do, because it might lead to a lawsuit.

XQ. 682. What would be your lawsuit in the event that you did not use the patent and did not license it or undertook to use it in any way?

A. I do not know.

XQ. 683. There would be no liability, would there?

A. I do not know.

XQ. 684. What other element of liability is there in that patent?

A. "Would be obligated to defend the patents."

XQ. 685. Suppose you did not want to defend them and did not license them and did not use them, would that impose any liability upon you?

A. Not so far as I know. I answered this question on the assumption that——

XQ. 686. —the obligation to defend would exist?

A. Would exist, yes.

XQ. 687. Now, if it appeared that you had the

right to license that patent and fix the terms of the license, including the right to demand of the licensee to reimburse you for any costs of defending the patent, would that change your answer?

MR. KRESEL: Pardon me a minute. Where is there any such evidence as that?

MR. ANDERSON: I am assuming a state of facts, if your Honor please. I have assumed it; I have not stated it as evidence.

THE COURT: Based on the record?

MR. ANDERSON: Yes, sir.

MR. KRESEL: Is there anything in the record which shows that the licensees would have to reimburse anybody for a lawsuit?

MR. ANDERSON: Not at all. I do not say that they would have to. I said, "If you had a right to license a patent and fix the terms of the license, require such conditions with the licensees as you saw fit, including among those conditions the right to require a licensee to reimburse you for any expense in defense of the patent." The charter of this company provides that the Board of Directors may grant licenses and fix the terms of such licenses and may terminate or cancel such licenses, in effect the language is; I do not remember the exact words. Now, if they had the power to license and have the power to grant a license and to fix its terms, they could protect themselves as to any obligation to defend to as full an extent as they saw fit. Therefore I am assuming that. I am not arguing that at this time. I am assuming that premise.

THE COURT: Is there objection?

MR. KRESEL: No, your Honor, I shall not object. Do you leave the other considerations in?

MR. ANDERSON: I am leaving in for the present all other considerations. I am trying to find

out what was the basis of his statement that this patent would create a liability instead of an asset. I was assuming that the owner or purchaser would have a right to grant licenses or not as he saw fit, and that if he granted a license he had a right to fix the terms of the license and include in that any protection against any costs he might incur in defending the patent; and I then asked whether there would be any liability in that patent referred to.

MR. KRESEL: Colonel, what I do not understand is whether you want him to assume all the other facts in the question or not.

MR. ANDERSON: I have asked him to assume all the other facts in the question, yes, sir. I am now getting the liability question fixed.

A. Will you permit me to refresh my memory by referring to this again?

XQ. 687. (Continued.) I would be very glad if you would.

A. There are so many clauses in this that I can not keep them all in mind. What page was that on?

MR. KRESEL: 3281.

A. (Continued.) I think it would still be valueless.

XQ. 687. (Continued.) No; I am talking about liabilities now. Would there be any liability on it?

A. Yes, because of the fact that an American citizen claimed to have a pre-war exclusive license from the German owners of the patent to manufacture the product in the United States during the life of the patents, the fact that the citizen of the United States then claimed to have a pre-war agreement with the German owners of the patents for the transfer thereof to said American citizen.

XQ. 688. We have been over that, have we not?

A. Yes.

XQ. 689. You will stand on your answers that we have already had, will you not?

A. Yes.

XQ. 690. Let us take up the last clause there that you take up about the obligation to defend the patent. I have asked you if the license were given in the manner which I have indicated, would that liability exist?

A. You assume all these other conditions.

XQ. 691. I have already dealt with these questions. Now I am directing my question to the other conditions.

A. My answer is as I have given it.

XQ. 692. I will ask you to assume that at the time this sale took place or was to take place in the early spring of 1919 there were outstanding, as stated in the hypothetical question which you answered, four licenses to American manufacturers to make salvarsan and neosalvarsan or arsphenamine and neoarsphenamine, which licenses were issued by the Federal Trade Commission—under the German patents which we have been discussing; and that such licenses were to continue by their terms until the end of the life of the patents and I think it appears here in evidence that the patent on salvarsan would expire in 1928 and the patent on neosalvarsan in 1930; that during the year 1918 there accrued under these four licenses of the Federal Trade Commission royalties aggregating $73,512.18; and assume that the purchaser of the patent would be entitled to receive any royalties accruing under those licenses after the date of his purchase and would have the right to license those patents to other persons or to use them himself, all the Federal Trade Commission licenses being non-exclusive. Would you not then say that these patents had a very considerable value?

MR. KRESEL: If your Honor please, I must object to the question upon these grounds. The

question assumes facts that are not in evidence. Indeed, it assumes facts which are contrary to the evidence.

For example, it assumes that the licenses issued by the Federal Trade Commission were to continue during the life of the patent. That assumption is made in the face of the statute which leaves it to a court to say whether or no the licenses are to continue. The question does not include, as it should, the statement that notwithstanding the fact that the licenses issued by the Federal Trade Commission may run during the life of the patent, the licensee had a perfect right to surrender it at any time; that therefore, any person taking that element into consideration cannot assume that because during 1918 a certain amount of money had been realized as license fees that that amount of money would continue to be realized for the remainder of the period.

Furthermore, it assumes a fact which is contrary to the evidence, namely, that the purchaser was to be entitled to receive the royalties under the Federal Trade Commission licenses subsequent to the date of the purchase, that assumption being made in the face of the record which is to the effect that not only has the purchaser of the patents not received that money but that that money is now in litigation, being claimed by two other parties.

Furthermore, there is no proof that any such sum as seventy-three thousand and some odd dollars—I do not recall the exact amount stated by Colonel Anderson—had been earned on these patents during the year 1918.

Furthermore, the question assumes that the amount paid under the Federal Trade Commission license is a royalty when the statute says it

is only a guarantee fund and not at all a royalty, an amount which the court may reduce or increase as the court may determine.

The question likewise assumes the validity of the patent which is a question that is always open under the statute, open to the licensee. The statute says that the licensee may make any and all defenses which would be available were no license granted. In other words, the licensee under this statute can go into court and not only question the reasonableness of the five per cent. that was imposed, but interpose a defense of invalidity of the patent.

Upon all these grounds, your Honor, we object to the question.

MR. ANDERSON: As to the first ground, that the Federal Trade Commission license is assumed to continue for the life of the patent, since it is granted by its terms for the life of the patent, as the license shows, in the absence of any evidence of conditions which would terminate it, it must be presumed to continue for the life of the patent.

As to the right of the person to terminate, I assume that that always exists under a license because a license is a mere right to use; and if a person does not want to use, he does not have to.

In the second place, the presumption will be that if the business was such that it yielded a revenue in 1919, with the enlarged continuing use of this product, a proportionate or approximately similar revenue would be yielded in 1919, 1920, and so on.

These are matters that are capable of being attacked but they are assumptions which, in the absence of other evidence, will be taken not as conclusive but as worthy of being taken into consideration.

Third, that they are not entitled to the royalties subsequent to the purchase: As we have shown here, the Chemical Foundation has instituted suits for these royalties in the various courts.

THE COURT: With respect to that, Colonel Anderson, is there not a difference between the right to have the royalties subsequent to the purchase—a difference between a challenged and an unchallenged right? Does that not make all the difference in the world?

MR. ANDERSON: Undoubtedly there is a difference, but that right at that time, so far as I know, was not challenged. It was subsequently challenged. They always have had to litigate about title to property and conditions surrounding the property. It is one of the contingencies of property ownership. But at that time, as far as I know, the right to receive these license fees from the date of the purchase was not challenged at the time the sale took place.

THE COURT: Then there is no evidence upon which business men could predicate a possibility to a sufficient extent to have it reflected in the purchase price.

MR. ANDERSON: I cannot say that that can be shown because the question of whether the Chemical Foundation was entitled to receive royalties from that date is now a question for the courts and I do not care to express an opinion on the subject. But they undoubtedly did take these patents over and did claim the royalties and in many instances went down to get people to terminate their licenses with the Federal Trade Commission and renew licenses with the Chemical Foundation and subsequently take out similar licenses with the Chemical Foundation. They bought whatever right they bought. They bought the right to those

royalties from that date as they thought they were and they are asserting a claim to that effect.

Fourth, that there is no proof of the $73,000: On that question I differ from counsel for the reason that the figures are made up from the evidence in this case and proof has been produced of the amount of royalties that accrued in the year 1918, in detail.

As to the Federal Trade Commission license fees being only a guarantee fund, the Federal Trade Commission license was based on a five per cent. royalty; and in the absence of any evidence that it was unreasonable or unjust will be presumed, having been fixed by the Federal Trade Commission, to be a reasonable and proper license fee and no evidence has been introduced to the contrary.

Therefore the presumption of the purchaser was—and he had a right to make that presumption—that that license fee would be the license fee he would be entitled to receive during the life of the patent. If it was modified, as the Court would have a right to do under the statute, that was one of the contingencies that he would probably take into consideration and it might slightly modify the amount that he would give as between a possible contingency, though not a probable one, and an absolute right.

Sixth, that it admits the validity of the patent. The issue of the patent itself is presumption of its validity. I do not claim to be a patent lawyear, but I think the evidence produced here—if there is any doubt about it—is sufficient to have established it.

In any event, at the time that it was transferred, and we are talking about that time, the

presumption of validity existed in favor of the patent which had been issued.

Therefore, as I see it, if your Honor please, the question fairly states the various elements which would enter into the mind of a purchaser at that time, for the consideration of the witness.

THE COURT: I would like to ask two questions.

MR. ANDERSON: Certainly, your Honor.

THE COURT: Those two questions are these: Is there any relation between the sale of land at a tax sale, and the sale of these patents under these circumstances? I do not mean similarity between the tax sale of real estate and the sales of real estate bringing the same value as real estate sold in the ordinary course of business.

MR. ANDERSON: Sometimes they do and sometimes they do not, sir. I do not know about tax sales up in this part of the country but I have known tax sales down in my part of the country to bring very, very considerable values. A purchaser before he purchases the land looks into the question of title and things of that sort. If there is a possibility of a tax sale being set aside in any year, that may affect the value of the land, it depends on the statute and the character of the land, and various other contingencies.

THE COURT: Is there not that similarity here? So far as I know about tax sales—although I do not know what they are bringing now, it sold under the Tax Acts, I did know something about it when the Acts were first passed and carried into effect, that the price was more or less nominal, but that was owing to the novelty of the procedure in obtaining title under the Acts. It seems to me that your question and assumptions will not elicit an answer that is helpful.

MR. KRESEL: Will your Honor permit me to point out one thing further that I should have stated?

THE COURT: Yes.

MR. KRESEL: Colonel Anderson has made the statement that at the time of this sale, in 1919, nobody was questioning the right of the purchaser to receive the royalties subsequent to the date of the purchase, but as to the exclusive license to manufacture in the United States claimed by Metz, your Honor will recall he stated that Metz made no secret of that claim; that he pronounced it in the halls of Congress; that the purchaser at that time knew that he had to take these patents subject to the claim of Metz that he had the exclusive license, the pre-war exclusive license to manufacture in the United States.

THE COURT: For the life of the patent.

MR. KRESEL: For the life of the patent, as he has stated here.

THE COURT: Is that embodied in the question?

MR. KRESEL: It is not.

MR. ANDERSON: There is nothing embodied in the question that I have asked. It is in the question that Mr. Kresel asked, but I do not remember the evidence as Mr. Kresel states it, and therefore I omitted it expressly, because I do not think it has got anything in the world to do with this case.

MR. KRESEL: Wait a minute. Do you challenge the correctness of it?

THE COURT: One minute. I fail to follow your two statements. You made two statements, Colonel Anderson, and the first was that you did not recollect the testimony.

MR. ANDERSON: I do not remember it as Mr.

Kresel states it. I understand that Mr. Metz said that he claimed a license under this patent by verbal arrangement with some man in Europe—the salvarsan patent I think, but just what the arrangement was did not appear very definite.

MR. KRESEL: I can lay my hand on it in a minute.

MR. ANDERSON: And in the next place, so far as that fact being known to the purchasers of these patents at the time that they made the purchase, I do not recall Mr. Metz so testifying. I would not undertake to state what he did testify to, but I have not answered your Honor's suggestion about a tax sale. I doubt if I have made as clear as I should have done to the Court, the view of the Government here, which is that this whole transaction differs fundamentally from a tax sale, in that a tax sale is required by law to be made; while in this case there was no obligation on the holder of this property to sell, until the conditions of sale were made favorable, by either the determination of the surrounding facts, or the determination of the title, or any other conditions; and that one of the highest and most important conditions imposed upon a person holding trust property, is that he must not sell unless and until the conditions of the property are such that they will bring a most favorable price. Therefore, if the argument made here is that this sale was made under conditions which tended to destroy or depreciate the value of the property, then that argument leads to the inevitable conclusion that it was an invalid sale.

THE COURT: I understand your contentions.

MR. ANDERSON: I merely wanted to add that, because I did not want to leave an unfinished reply.

THE COURT: I do not see how you can escape from the conclusion that the Act itself in authorizing the sale, will assume a public sale under specified conditions, where the Government is taking the patents, the owner being unwilling to have them seized, and where the owner was excluded as a competitor in the purchase, and where the purchase, if I recall it, was restricted to Americans. Now, that in itself did not create a condition that the Alien Property Custodian had anything to do with.

MR. ANDERSON: Possibly, but there is not present any one of the conditions that I have mentioned. In other words, I am perfectly willing to assume that these patents could only be bought by some one of the one hundred and ten million of the community of American citizens; that they could only be sold when the owner was excluded from the purchase, and the other conditions which the Act prescribes expressly; but taking those, then that did not relieve the person who is making the sale, from putting the property in the best condition for sale that it could be, with those conditions attached to it by Congress.

THE COURT: I think the objection is well taken. You may take the answer under the general rule.

MR. ANDERSON: I will ask that the answer be taken, and then I will frame the question again, sir.

MR. KRESEL: Would your Honor like me to point out the part in Mr. Metz's testimony?

MR. ANDERSON: Please repeat the question.

(Question repeated.)

A. I would say that perhaps their value would be enhanced, but I could not say that they would have very considerable value.

(No Q. 693.)

XQ. 694. Now, I will take the question as asked by Mr. Kresel, and I will add to it the assumptions stated in the question as asked by me, and ask you to say what then would be your answer?

MR. KRESEL: Wait a minute. I would suggest that you read him the entire question. I myself would not be able to carry it.

THE COURT: Can you answer it?

THE WITNESS: I understand to what Colonel Anderson is referring.

XQ. 695. I will ask you this question, then: Doctor, based upon your general knowledge of drugs and their manufacture, your knowledge of the salvarsan and the neosalvarsan patents, your experience in the manufacture of these products, the lack of information as to how to manufacture under the patents; the fact that four manufacturers were then supplying the product to the consumers; the fact that there was a pre-war exclusive license from the German owners of the patents, for the manufacture of the products in the United States, during the life of the patent; the fact that a citizen of the United States then claimed to have a pre-war agreement with the German owners of the patent, for the transfer thereof to American citizens; the fact that the owner would be obligated to give the United States a free license to manufacture said product, or to have it manufactured for its own use, and would be obligated to issue non-exclusive licenses under said patents to any qualified American citizens, and who would be obligated to defend the patent, and never have any more than six per cent. return on his investment—that is Mr. Kresel's question. Without admitting that the facts there stated are contained in this record, or that they correctly state the evidence, I want you to add the further assumption to his assumptions, that these patents at that time were

accruing royalties under the four Federal Trade Commission licenses, which in 1918 aggregated $73,512.18, and that the purchaser of the patents under the conditions named would have the right to receive all subsequent royalties after the date of his purchase, which might accrue under the Federal Trade Commission license during the life of the patent, state then whether you think they would have a value?

A. I think they would have a very doubtful value, because the buyer would very likely just be buying a lawsuit.

XQ. 696. Doctor, do you know that the Abbott Laboratories took out a license No. 299 from the Chemical Foundation on September 26, 1921, to manufacture novocain?

A. I do not know.

XQ. 697. You do not know?

A. No.

XQ. 698. Do you not know, as you have been testifying to these matters, that as a matter of fact the Abbott Laboratories held licenses under Patent No. 812,534 from the Federal Trade Commission, on a basis of five per cent. of gross sales? You do know that, do you not?

A. I understood so, yes.

XQ. 699. And that on September 26, 1921, they took out Foundation License No. 299 under the same patent, which was fixed at the rate of five per cent. on net sales; is that not true?

A. So far as I know it is, but I have not followed that particularly.

XQ. 700. If you have been keeping up with the Dermatological Institute affairs I will ask you whether you do not know that they operated from November 26, 1917, under Federal Trade Commission Licenses 1, 1a, 1b, and 1c, on the basis of a royalty of five per cent. of gross sales?

A. That was my understanding.

XQ. 701. That these licenses covered salvarsan and neosalvarsan. You so understood?

A. Yes.

XQ. 702. That in April, 1921, they took out Chemical Foundation License 189, June 1, 1921, Chemical Foundation License 256, June 1, 1921, Chemical Foundation License 257, and on the same date Chemical Foundation License 258, in lieu of the licenses that have been stated, and that on the Foundation licenses they paid five per cent. on net sales instead of five per cent. on gross sales. Did you know that?

A. I knew that the licenses were transferred to the Chemical Foundation, but I did not clearly know on what basis they were paid.

MR. KRESEL: Colonel, our exhibit shows that, does it not—shows the facts? Whatever the exhibit shows is the fact.

MR. ANDERSON: One minute, Mr. Kresel. Whatever your exhibit shows may be a fact, but I am testing the knowledge of this witness who has been testifying about the business of these companies, not only his own department but all other departments.

MR. KRESEL: All right.

MR. ANDERSON: I want to see how far he can go outside of it, and what he knows.

MR. KRESEL: All right.

THE COURT: Outside of the matters to which he has testified?

MR. ANDERSON: In other words, outside of his department. In his direct examination he c[illegible]red every branch of this business, knew it all, and I want to know how much he knows about it.

THE COURT: That is not cross-examination. You can take it under the general rule if you want it.

MR. KRESEL: Your Honor will remember how

strictly I was held in questioning this witness. He was asked to construe documents and to give his opinions on questions of law, and I have not objected.

THE COURT: The question asked is not cross-examination. The answer may be taken under the general rule if you so desire.

MR. ANDERSON: The answer has been given, if your Honor please, but my purpose in the cross-examination was to test the extent of his knowledge on the subject, and as long as he has testified representing these companies I want to know how far his knowledge goes; because he did testify to the business, the conduct of the business, and the books of the Dermatological. However, the answer has been taken and I will not argue the question.

I will now take the patent on cinchophen and neocinchophen. Has the witness those patents there?

MR. KRESEL: They are in evidence.

XQ. 703. I wish you would point out the one which is cinchophen; will you?

A. This is cinchophen and this is neocinchophen (handing counsel).

XQ. 704. I think you said that you personally attempted to manufacture this product called cinchophen under this patent; did you?

A. I did.

XQ. 705. Where, at the University of Illinois or at Chicago?

A. At the Abbott Laboratories in Chicago.

XQ. 706. In what year?

A. Beginning 1918, early in 1918, and I may have done a little work at the University of Illinois but it did not amount to anything, we did not get anywhere.

XQ. 707. When did you finally make the stuff?

A. We were producing some right along.

XQ. 708. You were producing some right along under this patent?

A. But we had so many difficulties with it that the amounts produced were small, and the price was high. We were losing money on it.

XQ. 709. You were losing money on it, but you did produce cinchophen?

A. Oh, yes.

XQ. 710. And you produced a product described in this patent No. 1,075,171, did you not?

A. Yes, sir.

XQ. 711. That was cinchophen?

A. Yes, sir.

XQ. 712. You followed the process outlined in that patent, did you not?

A. No, not as it stands.

XQ. 713. Will you take the patent and tell me exactly where you vary? I am not going to ask you to go over the patent to say first what you did, but tell me what in particular, chemically, you did?

A. In the first place, we had to work out a method of making pyropyruvic acid or pyroracemic acid, which is not on the American market, or was not at that time.

XQ. 714. It is now, is it not?

A. Not to my knowledge. That is, not in commercial quantity.

XQ. 715. That was an intermediate, was it not?

A. Yes.

XQ. 716. That was not a patented article?

A. No.

XQ. 717. In other words, any chemist trained in the art, learned in the art of chemistry, could have made that from the products of which it is known to be made?

A. He could have made it in small quantities.

XQ. 718. All right, you first had to make that. The patent does not pretend to cover the making of that product, does it?

A. No. It says here that to the alcoholic solution of benzylidin anilin is gradually added pyroracemic acid to the boiling solution, the alcohol solution being kept boiling. We found that temperature had a lot to do with it there, and if it was added to the boiling solution, as here stated, the amount of tarry products greatly exceeded the amount of cinchophen that we obtained.

MR. KRESEL: Your Honor, may I have that answer repeated?

THE COURT: Yes.

THE WITNESS: Would your Honor want me to repeat it or have the stenographer read it, whichever you prefer?

THE COURT: I would rather have you repeat it.

THE WITNESS: The patent calls for this method: To an alcoholic solution of benzylidin anilin is gradually added pyroracemic acid to the boiling solution, the alcoholic solution being kept boiling. My statement was that if that process was carried out the amount of tarry material obtained exceeds the amount of good cinchophen obtained, it does not give a good product, it gives more by-product than it does good product.

XQ. 719. In what respect did you vary the method from the method described in that patent on that point?

A. Your Honor, I would like to ask you a question there, if I may. There are various things here in these patents which involve the results of years of research of our company and by pointing out specific instances, as would be involved in this case, it would tell exactly the essential things that we are carrying out

differently, that have made the processes profitable for us, and as far as the information is concerned I shall be glad to give it to your Honor personally. But as far as having it appear in an open courtroom and appear in the record, I do not think it is fair to the company. I am not the one to lay down the policies of the company, but I think it is giving away the most valuable information the company has.

MR. ANDERSON: My view is this, sir—that this company is shown on the record here to be one of the original subscribers to the Chemical Foundation, one of the original underwriters, a stockholder. The witness comes here to testify on its behalf, presumably as a stockholder. May I ask the witness if he is under subpoena, if he has been summoned here?

THE WITNESS: No.

MR. ANDERSON: He came here by direction of the officers of his company. Did you not?

THE WITNESS: Yes.

MR. ANDERSON: They send an officer here to testify, to attack the very patents under which they hold licenses; and therefore if he goes on the stand and undertakes to testify the process they used is different from the process of the patent here, while the Government does not wish to embarrass anyone if it can help it, we are entitled to know what those differences are.

MR. KRESEL: If your Honor please, I should be the last one to oppose giving the Government any information that is available in this case. But I do not think the Government should insist or is entitled to insist upon this witness divulging for the benefit of their rivals such information as they have obtained after a great deal of research and at large expense. Your Honor is the only one who can be aided by that information, in your decision

of the case, and the witness has stated that he is perfectly willing that your Honor shall have the information.

Of course, I must admit that Colonel Anderson speaks for the Government and not I, but I can not see where the Government's interests in this case demand that that information be spread upon the record to become public property. I am informed by my colleague that that question in a similar form has come up, as to trade secrets, in the case of the DuPont Powder Company against Masland in 244 U. S. Supreme Court Reports, at page 100. Your Honor no doubt is familiar with that.

THE COURT: It came up in this Circuit, but I am not familiar with the limitations of that decision. If I was, they have escaped my memory. Is there someone here who can tell me?

MR. KRESEL: I think Mr. Mahaffy is familiar with that.

MR. MAHAFFY: I do not recall. I recall the fact that it was heard before Judge Dickinson in a suit that went to the Court of Appeals, and then to the Supreme Court.

THE COURT: I recall the nature of the suit. The Court of Appeals reversed the court immediately below.

MR. HERSHKOPF: I think I can tell your Honor what the situation there was. The DuPont Company was suing to restrain Masland, a former employee in its employ, from making a disclosure of trade secrets and from using them after he left their employ. He contended that what he knew was not a trade secret at all, but in the nature of public information, and he purposed to propound to experts who were going to testify the very matter which was the subject of the prayer for in-

junction. It was against that the appeal ran. The Court held that that need not be done in any manner so as to pass it to the public, that the questions could be submitted to the court confidentially, that the experts could testify, without reference to this matter, what they did know and what they did not know, that then his Honor could compare the answers with what the experts testified and tell whether it was or was not matter of general knowledge.

MR. KRESEL: It is at page 100 of the book your Honor has had brought in.

MR. ANDERSON: It would be a most remarkable situation, I submit, if your Honor please, if a witness could voluntarily come into court, practically representing the defendant because one of the owners, and attack a process under which the plaintiff claimed, then could be relieved of the obligation to tell the details in which it differed, to the end that the court might determine whether it was an infringement or a valid change and came within the patent or not. As to your Honor's knowledge of the situation, of course, for the purposes of this particular hearing your Honor's knowledge is all that is desired, but necessarily that would not go any further than the court, and this case may, of course, go a good deal further than this court and all these questions may become material in the upper court.

THE COURT: Have you examined the case to which reference has just been made?

MR. ANDERSON: No, sir, I have not. I have not examined the subject at all. I am just proceeding on reason and what seems to me common sense.

THE COURT: It seems to me that the administration of justice is a matter in which every

citizen of the United States is interested; in which every lawyer ought to be if anything, more deeply interested than the citizen.

MR. ANDERSON: I quite agree, sir.

THE COURT: It seems to me that a person ought to come willingly and without hesitation to the witness stand knowing that he is going to be treated in a proper manner and that his telling the truth is not going to be penalized. It seems to me that if on a matter which here is of relatively slight moment (if I recall the value placed on this patent, it was rather slight), in order that he may tell whether this patent is workable or not (that is the limit of the information with which we are concerned here), he is required to disclose, not his secrets, but the secrets of his employers, secrets upon which the business of this company is mainly built, as he tells us—it seems to me that the administration of justice could be very readily brought into serious disrepute, where, instead of aiding this administration of justice, those engaged in business would desire to escape testimony in every conceivable and possible way. I am not now going to compel this witness to answer.

MR. KRESEL: May I point out to your Honor now that this case before me is as Mr. Hershkopf stated. The defendant in that case, preparatory to trial engaged experts, and to those experts—mind you, they were his experts—and to those experts he was about to disclose the very information which the action sought to keep secret, and the plaintiff went into Court and obtained a preliminary injunction against the defendant disclosing that information to his own experts. From that injunction there was this appeal to the United States Supreme Court.

The Supreme Court held that during the taking of proofs the defendant might properly be enjoined from disclosing the processes to experts or other witnesses, the restraint not extending to his own counsel, and that the trial judge in his discretion might reveal them to such persons at such times and under such precautions as he might deem necessary in the progress of the case.

That is exactly what we are asking the Court to do.

MR. HERSHKOPF: Except that our case does not go as far as this. There that was the only issue. This is a collateral matter. The witness has testified that the process as followed out results in a tarry substance, so impure that it is not fit for use as a drug. He is not called upon to instruct his competitors on how to make that impurity a valuable drug. That is the question that Colonel Anderson is now asking.

MR. KRESEL: Would you like to see this case? (Hands citation to Mr. Anderson.)

THE COURT: I will do one of two things: You may examine this witness as fully as you like on cross-examination with respect to whether or not that patent is workable, whether it makes a disclosure which will enable the production of the product. You may go as far as you like under the General Rule without asking him to disclose the trade secrets, which I do not think this question demands.

You may go one step further if you like. You may recall this witness tomorrow morning. I shall not ask him to make his disclosures now; but you may recall this witness tomorrow morning, if you desire, and have him disclose to you, to Mr. Kresel and myself in Chambers, to be there recorded by this witness in longhand himself,

that testimony showing precisely the secrets, that testimony to be sealed and to be transmitted to the Court of Appeals under the seal of this Court and not to be opened or referred to in briefs or otherwise, but if it is desired to be referred to, to be privately referred to, and not to be disclosed by you to any of your colleagues, or by Mr. Kresel to any of his colleagues.

You may have your choice; but I am not going to ask a man on this very remote collateral issue to disclose secrets which he tells me would be possibly highly detrimental to the business of his employers.

MR. ANDERSON: Then I will proceed with the examination under your Honor's ruling, reserving of course, an exception thereto, and if, after consideration of the matter with my associates, especially Mr. Knight, my expert adviser on this matter, we should reach the conclusion that we desire to suggest any other course to your Honor, why, we will suggest it, or follow such course your Honor may determine, of course; but in the meantime I will go ahead with other branches.

THE COURT: But you understand that the method I am suggesting, or that was suggested to me and which I have indicated that I would follow, does not prevent you from obtaining the information which you ask. I am not limiting your examination. I have no objection to your taking an exception; but it seems to me that the exception indicated is one that lies to the ruling of the Court which prevents a public disclosure of the business of this concern. I do not understand that.

MR. ANDERSON: No, sir, it was not so intended. I had no idea that the question would arise and therefore I have not had a chance to talk to any-

body and I am in deep water on this subject. My view of the matter is simply this: that when a witness comes into Court——

THE COURT: I understand you agree with what I said?

MR. ANDERSON: My exception was not directed to your Honor's refusal to make public in open Court, or anything of that kind. I think under the circumstances of this case the plaintiff is entitled to an answer to this question and the right to cross-examine fully on that question in the record in this case. I do not mean to say that your Honor's alternative suggestion will not meet the situation at this time, but I merely want to reserve that question.

THE COURT: It will be in the record, but not in the public record. That is now finally determined.

MR. ANDERSON: That is all right; I merely want to reserve the question.

THE COURT: So that if this witness, before giving the information, wants to communicate with his employers, I do not mean to say that anything they say will relieve him; but he may have until tomorrow morning to give it. I will not compel the answer this afternoon; (to witness) but if Colonel Anderson asks you those questions, we will go into Chambers and I will let you set out your answers in longhand in your own handwriting. There will be no copies made of it. That will be delivered to me. Nobody will be present except Colonel Anderson and Mr. Kresel, you and myself. As soon as that is written out, that may be sealed in my presence and the seal of the Court put on it, so that it will not be opened by anybody except by me or by some Appellate Court. You may advise your em-

ployers that you may be called upon to give that information, and if you are called upon, you will have to give it regardless of what your employers say.

THE WITNESS: Your Honor, I think that is perfectly fair. I should like to ask one more question with respect to that.

THE COURT: You may.

THE WITNESS: The same thing that came up here holds even more forcibly in the case of the arsphenamines, because there we have something that is even more important to us and concerning which in my evidence I have disclosed a number of cases where it is not satisfactory and I have indicated to some extent how we got around that. For instance, in making arsanilic acid and then going around to the next step. But to go into detail and state that would not only be a breach of confidence on my part, with which my company has entrusted me, but it would also involve certain points which can only be brought out in connection with the apparatus employed, the actual operation, which would not be indicated by the directions given.

THE COURT: That question is not before us; and if it is brought up, you may be called upon to go through the same process. But that will be with the distinct understanding that it is not to be revealed by Colonel Aderson or by Mr. Kresel or by myself save in the transmission of the sealed evidence to the Court of Appeals.

THE WITNESS: I thank you.

By MR. ANDERSON:

XQ. 720. Now, Dr. Volwiler, are there any variations in the process which you followed in making this cinchophen, other than what you have indicated as

being a secret matter which you did not wish to disclose, that is of common knowledge to the profession or trade?

A. At the end of this reaction which we have just been discussing, you get cinchopen in impure form; and the next question is the isolation and the purification which again involves steps which we have worked out ourselves and which have never been published.

XQ. 721. Without stating what those steps are, do they involve any matters which would not be known to any person skilled in the art of chemistry?

A. Yes, sir. It took a number of us a long time to find out how to do it. As a matter of fact, the last improvement came about only after we had been making cinchophen for two or three years.

XQ. 722. And selling it?

A. Yes, sir.

XQ. 723. Now, to go back, is there any reason why two or three other persons making the same kind of experimental or research work could not accomplish the same purification results? Do you know of any?

A. No reason that I know of.

XQ. 724. To go back, this cinchophen patent is a product patent, is it not?

A. Cinchophen is not. Cinchophen is a process patent. Neocinchophen is a product patent.

XQ. 725. In your original and experimental work you did produce under that patent, by that process, cinchophen in small quantities which had to be purified and was purified so as to get the actual article, did you not?

A. Yes; it was not quite pure even then, Colonel.

XQ. 726. You did sell that product, did you?

A. Yes.

XQ. 727. Made under that patent?

A. Yes.

XQ. 728. And subsequently by methods some of which you have disclosed?

A. May I add something to my previous statement?

XQ. 729. Yes.

A. It was not manufactured according to this patent just as it stands. We had to add extra information to this in order to sell any at all. We have not made any cinchophen under this patent just as it stands.

XQ. 730. Where did you stop when you followed the process of the patent? Where did you begin to add to it? I am not asking you what you added to it.

By The Court:

Q. 731. May I ask you a question, whether the information that you added was information known to those skilled in the art or whether it was information that had to be developed?

A. It was information that had to be developed because it involved the combination of members rather than the employment of methods.

Q. 732. What I wanted to know was whether the information that you added to that of the disclosure of the patents was such as anyone skilled in the art would know or whether it required information by experiment and discovery.

A. I can state that better by saying that it involved original research.

By Mr. Anderson:

XQ. 733. Let me ask you if you have ever made cinchophen without following in part the process named in that patent?

A. Yes, sir.

XQ. 734. Have you ever made it by entirely abandoning the process named in that patent?

A. Yes, sir.

XQ. 735. And you can not without disclosing your trade secrets tell the variation?

A. I am willing to tell that.

XQ. 736. All right, tell me exactly what you did do when you made cinchophen then.

A. Cinchophen can be prepared by a reaction of isatin with acetophenone and that will give the same product.

XQ. 737. That will give the same product as the product which is said to be produced under that patent, will it?

A. Yes, sir.

XQ. 738. I will ask you to look at this package which I hand you. Is that made by the Abbott Laboratories?

A. Yes, sir.

XQ. 739. Is that cinchophen?

A. It is, if the original contents are in the tube.

XQ. 740. You do not mean to suggest that the original contents are not in the tube do you?

A. Well, it is not a sealed package, that is all.

XQ. 741. That is the kind of a package you put cinchophen up in, is it not?

A. That is one of the packages, yes.

XQ. 742. That is an Abbott Laboratory label, is it not?

A. Yes.

XQ. 743. Will you read it?

A. "20 tablets cinchophen. Phenyl cinchoninic acid (U. S. P.) grains 7-½ (0.5 gm.) List No. 1253.

> "Action: Cinchophen increases the excretion of uric acid. Analgesic and anti-anthritic. Dosage, one to two tablets, three or four times daily, with one-half to a glass full of water. Made under license 15 from the Federal Trade Commission, under United States letters patent No. 1,075,171, Abbott Laboratories, Chicago, Illinois."

XQ. 744. The German patent to which you have referred is what number?

A. 1,075,171.

XQ. 745. And do you know that the Federal Trade Commission license is a license issued under that patent, or don't you know about that?

A. I think so.

XQ. 746. Federal Trade Commission license 15 issued to the Abbott Laboratories?

A. Yes.

XQ. 747. And this is the label under which you sold this stuff to the public, is it not?

A. Yes, sir.

XQ. 748. Where is your patent for neocinchophen; is this it?

A. No, that is not it.

XQ. 749. Here it is, I think. Is this not the one?

A. Yes, that short one.

XQ. 750. That is Patent No. 1,045,759, is it not?

A. Yes, sir.

XQ. 751. Is that a product patent?

A. Yes, sir.

XQ. 752. What is the process followed in making that stuff as described in the patent?

A. The process described is very brief. It involves making the ethyl ester of 6-methyl-2-phenyl quinoline-4-carboxylic acid.

XQ. 753. What was the variation from that patent? Just take the patent, as we have done in the other cases and tell me in what respect you varied from that patent in making this product.

A. You want me to go into it in detail?

XQ. 754. It is a very brief process, is it not?

A. Yes.

XQ. 755. Take the first step under that.

A. I should like to——

XQ. 755. (Continuing.) If this involves your giving any trade secrets, I am examining you subject to the ruling of the Court on that subject and there is no use of opening that question up. You may just say so and I will stop.

A. I did not want to state that in so many words. I want to take a middle ground. I am willing to state the steps that are not desirable and satisfactory in here.

By Mr. Kresel:

Q. 756. You mean under the patent?

A. Under the patent, yes; and point those out if that will meet your desire, Colonel.

By Mr. Anderson:

XQ. 757. Can you not state what you substituted in place of it?

A. I should prefer not to.

XQ. 758. Then if you can not state what you substituted in place of it, I can not ask you what is desirable because that question follows immediately. There is no use of stating a half truth, you know. I want the whole thing.

A. (No answer.)

XQ. 759. I will ask you to look at this package (handing to witness). Is that made by the Abbott Laboratory?

A. It is.

XQ. 760. Is that neocinchophen?

A. Neocinchophen, yes.

XQ. 761. As put up by the Abbott Laboratories?

A. It is.

XQ. 762. Now, Dr. Volwiler, whatever variations in process you followed and which you say you can not disclose without giving certain trade secrets, is it or is it not the fact that when you got through you got neocinchophen?

A. Yes.

XQ. 763. It is neocinchophen?

A. We are making neocinchophen. That is what you mean?

XQ. 764. Yes.

A. That is right.

XQ. 765. I read from this package that you have identified as a package of the Abbott Laboratories, the label as follows:

"100 neocinchophen. Grains, 5 (0.3 gm.) List No. 1338."

I have omitted the chemical name under the trade name. "Doses, 2 or 3 tablets three or four times daily with one-half to a glassful of water. Licensed by the Chemical Foundation, Incorporated, under the following United States Letters Patent, No. 1,075,171, October 7, 1913, the Abbott Laboratories, Chicago, U. S. A."

I will ask you what is the number and date of the patent to which you have referred, the German patent? Have you got it there?

A. I do not think I have it, Colonel.

XQ. 766. Will you look at it and state the date and number?

A. November 26, 1912. The number is 1,045,759.

XQ. 767. Then where is the patent under which you were manufacturing this stuff?

A. That is evidently an error. That is the cinchophen patent number instead of the neocinchophen.

XQ. 768. It is?

A. Yes, sir.

XQ. 769. You are in fact manufacturing and selling this neocinchophen under a license issued by the Chemical Foundation under that patent that you hold in your hand, are you not?

A. Yes, this one.

XQ. 770. And that is number what?

A. No. 1,045,759. The other is an error.

XQ. 771. This statement on the label that it is patented under Patent No. 1,075,171 is an error?

A. Yes, that is correct.

XQ. 772. And I understand, Doctor, that you can not tell me the steps that you pursued in the manufacture of this neocinchophen without disclosing trade secrets which you do not feel at liberty to give?

A. Yes, sir.

XQ. 773. You spoke of the cost of research in perfecting the manufacture of cinchophen and neocinchophen this morning. In order to shorten your examiation, are you willing that your answers in regard to the sources of your knowledge and your knowledge of the cost of this research as applied to the work on novocain shall apply to the sources of information and your knowledge on the subject with respect to these two patents?

A. That is cinchophen and neocinchophen?

XQ. 774. Yes.

A. Yes, with this provision, Colonel, that on some of these products I was in the plant until the work was complete, until they were satisfactorily produced. On others, I was in the research laboratory before the final commercial improvements had been finished.

XQ. 775. Can you tell which products?

MR. KRESEL: Colonel Anderson, may I make a statement here?

MR. ANDERSON: Yes.

MR. KRESEL: On the question with reference to the amount spent on research, I will say now that I shall call another witness in the Abbott Laboratories who I hope will have more personal knowledge on the subject. So that you need not spend any more time in asking him further about that.

MR. ANDERSON: All that I want is that it be understood—and I am willing for his explanation to go in with one additional question—that his testimony on this subject this morning is subject to the same sources of information, want of knowledge and so forth which I indicated with regard to novocain, with the addition which the witness has made.

XQ. 776. If you can, tell me what particular products you refer to when you say that you were in the laboratory, the plant, when the research was completed?

A. On cinchophen the work was not complete when I went out. On procaine the work was almost complete. Those are the ones that you asked about.

XQ. 777. And the same applies to neocinchophen, I suppose?

A. On neocinchophen the work was not started until after I had left the plant and we carried out the research in the laboratories and then when necessary, sent a man to the plant, one of my men to the plant, to see it through.

XQ. 778. One of your men?

A. Yes.

MR. ANDERSON: May it please the Court, it is impossible for me to examine this witness as to the process under this patent——

MR. KRESEL: Which patent?

MR. ANDERSON: Under the patent for either cinchophen or neocinchophen, in accordance with my notes here, and the questions I want to ask him run directly against your Honor's rulings. I am not going to do that. I do not know that it is necessary for me to make formal offer to examine on that subject. I do not want to do that. I just merely want to state on the record that I

desire to question this witness as to the actual processes used in the manufacture of cinchophen and neocinchophen and as to the exact variations from or improvement on the process described in the patent. But under his answers already made, that they involve necessarily the disclosure of certain matters which would be prejudicial to his business, under your Honor's ruling on that subject, I will not pursue that inquiry by asking the questions and having them ruled out; and I do not think it is necessary that I should do so.

THE COURT: No, and you may take that up in chambers.

MR. ANDERSON: I will discuss that with Mr. Knight, tonight, and after going over the evidence, I will tell very much better whether it is sufficiently material to go to that trouble. I do not want to go to any trouble we can avoid in this case.

THE COURT: I only want to make this record clear, that I am not denying to you the opportunity of taking from this witness any information on that. There is no limit placed upon you, since the beginning of this case, on any question. No testimony has been excluded, and none will be excluded, so far as I can now prophesy; but I shall keep control of the manner of the disclosure of that testimony, so as not to do unnecessary injury to a witness, or to a business, or to the employers of a witness. You may have full opportunity any morning or tomorrow, or any such day as you desire, so long as this witness is present, to go into that as fully as you like, under the conditions I stated a few moments ago. I would permit you to go into it now, except to me it seems fair—I am not putting it on any legal principle—I am justifying it on the point of view that it seems

fair before recalling this witness to discuss it, that he should have an opportunity of stating to his employers that he may have to disclose it, and will have to disclose it if you insist, but the disclosure will be made under the conditions which I have stated, with this possible exception, and you have not any objection, that I will have it taken down stenographically and reported by a local stenographer, who will give me but one copy, and will also return to me the shorthand notes which will be kept.

THE WITNESS: I would have no objection to that, your Honor, and furthermore, I will not have an opportunity to get in touch with my company by tomorrow morning to get their viewpoint on it that you have so kindly given me an opportunity to do; but I am sure that they, under the conditions that you have outlined, will have no objection.

THE COURT: The only reason that I am giving you that opportunity is so that they may know it before it happens rather than afterwards. It seems to me a fair proposition to you and to them to enable you to indicate that fact and ascertain their views.

THE WITNESS: I shall do so and I know they will be perfectly satisfied.

THE COURT: Then you will proceed with this witness tomorrow.

MR. ANDERSON: There are some questions that I want to ask on this additional patent No. 1,005,-176, a very few questions, which was the last patent he was examined on, but before passing from the one on which I was examining, I want to state the position and I want your Honor to understand I am not contesting the fairness of your Honor's position on that.

THE COURT: I understand.

XQ. 779. Now, under patent No. 1,005,176, have you got that patent here——

MR. KRESEL: That is in evidence.

A. I think you have the patent, Colonel, that I originally had.

XQ. 780. Now, this acriflavine patent No. 1,005,176 patented October 10, 1911, that is the one that you said you advised your company to purchase, is it not?

MR. HERSHKOPF: No.

A. No, not this. A different method for making this.

XQ. 781. You purchased another method for making that?

A. Yes.

XQ. 782. Now, what does that patent call for you to do; what does it say you must do there to make that stuff?

A. It is a long process. Do you want me to read it all through?

XQ. 783. No. But I am afraid I will have to go through that process with you.

A. Yes, I will be glad to go through this with you if you wish.

XQ. 784. When did you do any work on that personally?

A. When?

XQ. 785. Yes.

A. In the spring of 1920.

XQ. 786. Spring of 1920?

A. Yes.

XQ. 787. Is that a product or process patent?

A. This is a product patent.

XQ. 788. It is a product patent?

A. Yes.

XQ. 789. And you are making that stuff now and selling it?

A. Yes, sir.

XQ. 790. And selling it under license under that patent, are you not?

A. Yes, sir.

XQ. 791. Who issues that license, do you recall, the Federal Trade Commission or the Chemical Foundation?

A. I can tell you in a moment.

XQ. 792. Please tell me.

A. The Chemical Foundation, our license No. 109.

XQ. 793. Issued under that patent?

A. Yes, sir.

XQ. 794. What date?

A. I do not know when the license was issued.

MR. KRESEL: The date is in evidence, Colonel, in our long statement. Every license is shown there and the date of it.

MR. ANDERSON: Have you got that?

MR. KRESEL: Would you like me to get that?

MR. ANDERSON: I would like to know the date of that patent. I would like to have it appear of record.

MR. KRESEL: License No. 109 to the Abbott Laboratories on acriflavine and proflavine, which was issued April 27, 1920. I read that, if your Honor please, from Defendant's Exhibit No. 83.

XQ. 795. It appears from Defendant's Exhibit No. 83, that you have paid in royalties under this license, which is five per cent. on the net selling price, $840.77. Do you know whether that is true or not?

A. I do not.

MR. KRESEL: You can take that for granted. It is our exhibit and we are bound by it.

MR. ANDERSON: I just wanted to know what he knew about it.

XQ. 796. Now, you say that you bought from somebody else another process to make this?

A. Yes.

XQ. 797. Other than the one described in this patent?

A. Yes.

XQ. 798. Now, can you without disclosing your trade secrets, tell me the exact details in which the one bears to the other? It is no use going through it.

A. I am quite willing to, but I don't think it will do any good, Colonel, because the other process was not any good either. We had to reject it also.

XQ. 799. You did, after you bought it. Well, you told me you gave something that you called some $250, that is the one you are talking about, is it not?

A. Yes.

XQ. 800. And then so much royalty on it; as long as you used it?

A. No, a small royalty for two or three years, I have forgotten which.

XQ. 801. Now, you are manufacturing this stuff now and selling it, that is true, is it not?

A. Yes, sir.

XQ. 802. Now, can you, without disclosing your trade secrets, which under the ruling of the Court I am not going to ask you about, take this patent and follow it down in detail, as you did the novocain patent, and tell me exactly where the differences come in, between your present process and this patent?

A. Our present process is almost entirely different from this.

MR. KRESEL: You mean by this, the patent?

THE WITNESS: This patent, yes.

XQ. 803. That of course is not an answer that I can accept. If you can tell me in detail wherein it differs exactly; but I want to go through it step by step and find out just exactly what the difference is, and then I will decide, or the Court decide, whether

it is entirely different. If it involves a trade secret, it is no use starting in.

A. It does, and I should be glad to reveal it to you tomorrow, if you so desire it, under the conditions stated.

MR. ANDERSON: It is no use starting that then, because we shall only get half way and then stop. Now, if your Honor please, I would like very much to have an opportunity to confer with Mr. Knight and my advisers tonight on this question, and decide how far we are going to go into these questions in the morning, and submit to your Honor what we desire to do, in accordance with your Honor's suggestion.

MR. KRESEL: Other than that, you are through with the witness?

MR. ANDERSON: Other than that, for the present, I think I am through with the witness, but I have not been able to follow through on these last few patents, and I want to decide how far I may deal with the question, conforming to your Honor's suggestion.

MR. KRESEL: Inasmuch as the witness will have to return here tomorrow morning, anything I may have, may I reserve on re-direct until tomorrow?

THE COURT: Yes. Have you another witness that you can call?

MR. KRESEL: Yes. I have another witness I can call immediately.

THE COURT: (To the witness.) That is all for the moment.

(Witness excused.)

MR. KRESEL: If your Honor please, I am informed by the clerk that the salvarsan and neosalvarsan patents which we thought had gone in

evidence under Mr. Metz's examination, are not, in fact, in evidence.

THE CLERK: There are copies annexed to one of the Federal Trade licenses.

MR. KRESEL: Under the circumstances I want to offer this now. You have copies of them. We handed them to you.

THE COURT: Mr. Kresel, are the licenses, the Federal Trade Commission licenses, to be spread at large upon the record?

MR. KRESEL: I trust not, your Honor. That would make an impossible record; and I have been discussing with Colonel Anderson some method whereby we can agree to cut out and just have one as an example, for instance one printed.

THE COURT: As they are exhibits to the licenses, it is unnecessary to duplicate them when they are each admitted, and of course need not be duplicated in the record.

MR. KRESEL: Now I offer in evidence the salvarsan patent, which will be marked "Defendant's Exhibit No. 156."

Received in evidence and marked "Defendant's Exhibit No. 156," being patent No. 986,148. *(See Patent Exhibit Book.)*

MR. KRESEL: And the neosalvarsan patent, which will be No. 157.

Received in evidence and marked "Defendant's Exhibit No. 157," re-issue No. 13,848. *(See Patent Exhibit Book.)*

[Note: Bruce W. Gold was here sworn as a witness for Defendant. His testimony appears later in record.]

COURT: Adjourn Court until tomorrow at 8:30.

(Wherefore, at 3.40 o'clock P. M. Standard Time, an adjournment was taken until Wednesday, July 11, 1923, at 8:30 o'clock Standard Time.)

TWENTY-FOURTH DAY.

Wilmington, Delaware, July 11, 1923,
at 8.30 o'clock A. M. Standard Time.

Before:
HON. HUGH M. MORRIS, *U. S. District Judge.*

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

ERNEST H. VOLWILER resumed the witness stand.

MR. ANDERSON: May it please the Court, just before the adjournment yesterday, while the witness Dr. Volwiler was on the stand, certain questions arose as to his testimony with respect to the disclosure of certain matters which he said he did not wish to disclose. The matter was adjourned over until this morning under the circumstances which your Honor is familiar with. After conference with my associates I have prepared a brief statement which I wish to put on the record for the Government, and which I ask leave to read to the Court, in order that I may get it accurate.

THE COURT: You may proceed.

MR. ANDERSON: During the trial yesterday, while counsel for the Government was cross-examining Dr. Volwiler, a witness for the defendant representing the Abbott Laboratories, X. Q. 719, page 3409 of the record, was asked as follows:

"In what respect did you vary the method from the method described in that patent on that point?"

The witness in effect asked leave of the Court not to be required to answer the question on the

ground it would call for a disclosure of certain secrets in the business of the Abbott Laboratories. The Court, after some discussion with counsel, sustained the request of the witness and declined to require the witness to answer.

In the further discussion of the matter the Court indicated that it would not require the answer to any question in open Court as to the patents and processes with respect to which the witness had testified on direct where such answer would require a disclosure of trade secrets, but if counsel for the Government so desired, would have the witness testify before the Court in chambers, with only Mr. Anderson for the Government and Mr. Kresel representing the defendant present with the Court and the witness, and there show precisely the secrets which the witness desired not to disclose, the testimony thus taken in chambers to be transmitted to the Court of Appeals under seal of this Court and not to be used or referred to, in briefs or otherwise, but, if it was desired to be privately referred to, to be privately referred to and not disclosed by either counsel so present, to any of their colleagues.

It was further stated by the Court, record page 3415, that the evidence by the witness so taken should be delivered to the Court and no copies made thereof, and as soon as it was written out, sealed in the presence of the Court, the seal of the Court put on it, so that it could not be opened by anybody except by the Court or some Appellate Court, and that it should be taken with the distinct understanding that it was not to be revealed by either counsel for the Government or counsel for the defendant who may be present, or by the Court, save in the transmission of the sealed evidence to the Court of Appeals.

At that time, counsel for the Government asked that they be granted time to consider the suggestion and make reply thereto this morning, which was granted.

Subsequent to this ruling, counsel for the Government undertook to cross-examine the witness as to two other patents, as to which he had testified on direct as to the processes employed in making the products mentioned therein, and in his reply, he stated in effect that the details disclosed by this process would also disclose trade secrets, and a similar ruling thereon was made. Counsel for the Government thereupon reserved his further cross-examination of the witness on these points, until the rulings and suggestions of the Court could be considered. For further details we refer to the record.

Counsel for the Government have now given careful consideration to the questions involved and to the rulings and suggestions of the Court with respect thereto, and ask leave to submit the following statement to the Court:

1. The counsel for the Government are very desirous of complying with any suggestion of the Court insofar as they possibly can do so, without prejudice to the case of the Government, as they may see it, and do not wish to bring into the record any matter which might be embarrassing to any person whomsoever, or prejudicial to the interest of any witness or any other person, if it can be avoided without prejudice to the case of the Government.

2. The Government feels that it would be seriously prejudicial to its rights and interests in this litigation to accept the suggestion of the Court with respect to taking of this testimony,

and submits the following reasons therefor, in addition to those stated in the argument on yesterday, which are now relied upon.

(a) The record shows that the Abbott Laboratories were underwriters of and are now stockholders of the defendant, Chemical Foundation, and as such are interested in the ownership of the patents in question and are licensees, both from the Federal Commision and The Chemical Foundation under these patents. The witness testified that he was directed by the officers of the Abbott Laboratories to come here to testify in behalf of the defendant without any subpœna from this Court.

(b) On direct examination, the witness was given the greatest latitude in testifying for the purpose of undertaking to show that the patents in question were defective or of little value for the reasons disclosed in that testimony, and especially for the reasons that the processes therein set forth did not, under his work and employment thereof, produce any successful results.

(c) In order to test the correctness of this testimony and to show if it can be shown that the alleged variation in process employed or the use of other intermediate, as testified by him was immaterial or merely the use of equivalents or slight improvements in the processes and possible infringement of those processes, it is necessary that the Government should be able to have the witness state exactly what were the processes employed and the difference, if any, between such processes and those described in the patents.

(d) The matters referred to and the processes so employed are of the most abstruse and technical character, requiring a high degree of technical knowledge of organic chemistry, its

terms and methods, that counsel for the Government are not familiar with these matters, but must have in conducting this case and in preparing a rebuttal on these questions, the advice and assistance of competent chemical and other experts.

(e) The disclosure of the technical details indicated above, solely to this Court and to one of the counsel representing the plaintiff and one representing the defendant, as indicated by the Court on yesterday, under the strict seal of confidence, and under the terms and conditions indicated by the Court, would be of little service to the plaintiff, and it would bar the plaintiff from the benefit of technical advice thereon of a legal or other chemical character.

(f) The disclosure under these conditions would also place counsel for the plaintiff in a difficult position, since these alleged processes claimed to have been employed by the witness should be learned from other sources, or should be known to the officers of the Government, the Government might be embarrassed in bringing in testimony in rebuttal thereon, by the claim that they had been received from the witness under the seal of confidence, and if the same rule were applied as to other testimony which might be introduced in the case under similar conditions, it might greatly embarrass counsel and seriously prejudice the Government in the conduct of this case, both in this court and in any court to which the same might be taken.

(g) That the ruling of the Court, if sustained, would permit the witness or any witness similarly situated to testify as fully as he might desire in his own interests and on direct, and

then avoid all cross-examination by claiming the protection of the privilege of trade secrets.

(h) The Government feels that the witness, as representing the Abbott Laboratories, having by their direction volunteered to testify and thus attacked the patents in question in the manner described in the testimony and heretofore by this statement, the Government is entitled as a matter of right to thoroughly search the knowledge of the witness and investigate the process which he claims to have employed, in every detail, without limitation or restriction, and must respectfully ask that this right be accorded to the Government in this case.

I need hardly add that counsel are not wanting in any wise in appreciation of the embarrassment of a situation of this character and of the difficult and delicate questions involved. We have tried to see our way clear to meet the views of the Court and the suggestions of the Court, and after a most careful consideration of the whole matter, we feel that it is one of such serious import to the Government that the Government could not recognize or accept, without objection and without properly reserving its position on the record, the ruling laid down by the Court.

I need hardly say also that whatever the ruling of the Court may be, the Government, in the conduct of this case, will endeavor to conform as closely to it as possible, preserving on the record its position to the end that it may have it properly reviewed. I have made the statement in writing to the end that our position might be clearly set forth.

MR. KRESEL: I have but two observations to

make, if your Honor please, with reference to this extraordinary statement that has just been read into the record. In the first place, I think it was entirely uncalled for, for counsel for the Government to seek to place their own interpretation upon the Court's rulings and to place in the form of a statement their interpretation of the meaning of the record and of the extent to which your Honor indicated you would confine the publication of the testimony upon this point. And I want to say now that the defendant does not feel itself bound by any construction which has been placed by Colonel Anderson upon the meaning and the extent and suggestions and rulings made by the Court in this connection.

Why it was necessary to prepare a statement and read it into the record, with reference to a question of the admissability of evidence which arises in every case day in and day out, is a matter that perhaps counsel desire to explain. We stand upon the ruling of the Court. It is a ruling that is sustained by the decisions of the United States Supreme Court.

The Government, whatever its motive, whether it is the motive assigned in the prepared statement or no, will not be permitted without our objection to pry into the secret methods of this witness' employers, for the purpose of permitting their rivals to learn those secrets and for the purpose of enabling perhaps the Germans to learn how to do the things not according to the patents which they have taken out.

We have an absolute right, under your Honor's rulings, sustained as I say by decisions of the Supreme Court not to have that matter spread upon the record; and we decline even in

the face of the prepared statement to change our position in the matter, and we now ask your Honor to carry out the suggestion that your Honor made yesterday afternoon.

THE COURT: That was not a suggestion, Mr. Kresel. It was a ruling.

MR. KRESEL: Then the ruling speaks for itself, your Honor, and requires no construction from counsel on either side. If the Government does not desire to cross-examine this witness any further, it is its privilege not to do it, whatever its motives may be. If counsel for the Government is through with the witness, I have a few questions on re-direct that I desire to ask.

MR. ANDERSON: I am not through. I stated yesterday that I desired to continue.

MR. KRESEL: Very well; go ahead.

THE COURT: Before you proceed,——

MR. ANDERSON: Will your Honor permit me to reply to the statement just made?

THE COURT: Go ahead.

MR. ANDERSON: First, I wish to say that counsel for the Government are not called upon to explain to counsel for defendant their reasons for making the statement to the Court and putting it in writing, to the end that it might be accurate. If the Court desires an explanation, we should be only too glad to make it; but we are not responsible to counsel for defendant for our manner of conducting this case.

In the second place, we have undertaken to state our understanding of the question before us as accurately as we could. The record speaks for itself, and we so stated. But the details will appear from the record.

I do not think that the suggestion that the

Government is trying to get this information for the benefit of rivals or others is worthy of notice. The Government of the United States, so far as I know, does not indulge in that kind of practice; but it has a right to determine and it is the duty of its counsel to determine what it regards as material or essential to the protection of its interests in the courts.

I recognize the entire power and duty of the Court to rule on those questions and I shall submit with every possible deference to those rulings in all respects, reserving, however, and stating to the Court for the information of the Court my reasons for such reservation, such exceptions as it may be my duty to take under those circumstances under the instructions of my superiors.

THE COURT: I do not know that it is necessary for me to say anything under these unusual circumstances; but I think I should say, lest there possibly be a misunderstanding and in order that the Government may fully understand, that the ruling of this Court yesterday by which and upon which its stands today, and will continue to stand, was given with such latitude that the Government, in my conception of the ruling, would not be embarrassed in the trial of the case in this Court nor embarrassed in the trial of the case in any Appellate Court.

The reason for the ruling of this Court was that persons should feel free to come into a court of justice and be justly done by. The latitude of the ruling was broad enough, in my conception of it, to enable the Government and all parties in interest in this cause to have placed upon the record—not upon a public record, which might result in financial loss or financial destruction

to the employers of the witness, but to have spread fully upon the record which is available to this Court and available to any Appellate Court—all facts, not only all facts which may be material in the judgment of the Court, but all facts which, in the views of the counsel for the Government might have even the remotest bearing or relevancy to the issues in this cause. The record would be open to the counsel for the Government at any time. They would not be permitted to take a copy, not because of any thought that the Government's officials would disclose it, but there is always the danger in the circulation of copies of a record that it may be opened inadvertently to the eyes of persons who would make use of it detrimental to the interest, financial or otherwise, of the witness.

There was no indication in the ruling, so far as I am aware, that such copy would not be opened in the presence of the Court at such time or times as might be found necessary or convenient to the parties on either side. There was no suggestion prior to the ruling of yesterday, or after the ruling or prior to the statements spread upon the record this morning, that there would be any need or necessity or convenience in having such record open to the inspection of counsel more familiar with patent law than the chief counsel for the Government in the case here. There would have been no objection, and there is none now, to opening such a statement to Mr. Knight, for instance, or to some other persons skilled in the patent law in whom this Court would have the faith that it has in Mr. Knight.

The Government has seen fit in its statement to draw an inference contrary to that, and stands upon it, and I simply desire to say that

there is no desire on the part of this Court to open the trade secrets of this or any other witness unnecessarily to competitors. The ruling of yesterday stands.

Any further questions upon either side to the witness?

MR. KNIGHT: May I make a short statement?

THE COURT: I will be glad to hear you, Mr. Knight.

MR. KNIGHT: I thank the Court for its confidence reposed in me, which, I assure your Honor, I shall try to deserve. The ruling of the Court, repeated, makes clearer to us than it was before the possibility of taking advantage of the disclosures. I would like to indicate to the Court, however, that a patent lawyer, although he knows an awful lot, does not know everything. I am willing to admit that. A technical matter of this kind really requires interpretation to the patent lawyer by an expert chemist, one skilled in the particular methods concerned, and, providing I were permitted, under your Honor's ruling, to examine this matter, I would be considerably handicapped in understanding these chemical terms, with which I do not profess to be proficient.

I would suggest that if your Honor, under the due seal of counsel, would permit the Government to employ a Government chemist to cooperate with counsel in the examination, and, as I say, with the due seal of confidence upon them, and if we may understand from your Honor's present explanation of the ruling that the Government will not be handicapped in any way in producing evidence which it has or can obtain outside bearing on this subject, by reason of

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the seal of secrecy that has been put upon this particular disclosure, the Government's attorneys would feel considerably at ease in going into this thing, which considerably simplifies the Court's attitude toward the forcible disclosure of the secrets of manufacturers.

I may say as to that I am in full sympathy with that attitude and have always tried to recognize it so far as it is at all possible. But at the same time the first consideration in the disclosure of the truth is that that is the paramount consideration, and private considerations must not stand in the way of it.

I feel your Honor gives us full protection in the matter in a way, as I have indicated, which would enable us to go into this thing. We have no desire to hamper the prosecution of the matter in the way you suggest or rule, but we feel we must not put ourselves in danger of being handed an empty platter.

THE COURT: Are there any further questions of this witness by either side? I think there is nothing to add, Mr. Knight. I have tried to make my position clearer, and there is no question before me now. Whether this would need any reply testimony is a new question that could be determined when and if it should arise. You may proceed with the re-direct or further cross.

MR. KNIGHT: Do I understand, your Honor, we may raise that question again?

THE COURT: I think this is a closed matter now, Mr. Knight. I have indicated fully my views, that the ruling of the Court would not deprive the Government of full opportunity to make whatever use it saw fit of the testimony. There was nothing further than that indicated

yesterday, and the suggestions which have come this morning do not come at all as applications to the Court to extend the rule, but come in the form in which they do come—a bit unusual, but I fail to see that there is anything in the situation which jeopardizes in any way the interests of the Government in the prosecution of this suit here or on appeal.

I have no custody or control and exercise no power over the record when it goes to the Court of Appeals or to the Supreme Court. The only power that I have here and the only power that I am attempting to exercise is to protect and deal justly with both the Government and the witness. I have indicated that the Government has full power and full right to make such use of the testimony as is necessary, preventing at all times any public disclosure of the trade secrets of this witness. You may proceed with the further cross-examination.

MR. ANDERSON: If the Government is at liberty to make full use of the testimony so long as it does not disclose it outside, so that it may confer with its technical experts on that testimony and meet it in rebuttal, then I shall be very glad to go into chambers and take this evidence, because that meets our argument completely on that question.

THE COURT: I think I have indicated as fully as I can, Colonel Anderson, what I decide. It is wholly immaterial, of course, to me, whether you go into chambers and take the testimony or not. I am not concerned with that. This is absolutely and entirely settled—that I am not going to require this witness, or any other witness unnecessarily to disclose its trade secrets to the

public. You may proceed with such cross-examination as you desire.

MR. ANDERSON: I do not want to insist, your Honor, but if I can confer with the Government chemist as to this evidence without violating the seal of confidence, then I can proceed with the investigation of this question in chambers, and will ask leave to do so. If I cannot confer with the Government chemist, then I would be helpless because I would not know how to deal with it. That is the question that has been troubling us in this matter. If I could confer with Mr. Knight and the Government chemist, I would be just as well off as I would be in the courtroom, except that it would be under confidence.

MR. KNIGHT: All we desired was an interpretation of your Honor's ruling on that particular point.

THE COURT: Have you a Government chemist here?

MR. ANDERSON: Yes, sir. The Government chemist is here now, from the Government Public Health Service, brought down here on this very matter. If I receive this evidence in confidence, I cannot talk to anybody, and in addition, my position would be a very delicate one. Therefore, I want to advise with him exactly how far I can go without disclosing the confidence, without breaking the confidence.

THE COURT: Do you vouch deliberately and in open court for the chemist that you would take with you and give me your personal assurance that there would be no violation of the confidence on his part? I do not know him. I do not know his name. I would not know him if I saw him.

MR. ANDERSON: I never met him until the day before yesterday. He is an officer of the Government of the United States, and I can only give you that.

MR. KNIGHT: I will vouch for him. I have known Dr. Gibbs, of the Health Service for years He stands very high among chemists and stands very high in the Government service. I will vouch for him.

THE COURT: Do you see any objection to that from your standpoint, Dr. Volwiler?

THE WITNESS: My only objection is this, your Honor, that although I have perfect confidence personally in each of these three men through whom it would go, it would mean revealing these things to at least three persons; and it seemed to me that without reflecting in any way upon anyone's honor, yet there is running a certain danger in some way by reason of some one's having that knowledge, not intentionally revealing it, but revealing some portion of it, without intending to do so.

These things have come to us through years of time and money spent, and I have been here testifying under oath that the methods which were employed were not the methods as given in the patent. I have given, to the best of my knowledge, what the results were that we got under the German patents, and that we had to modify them essentially. And to state just exactly the points at which the variation occurred and exactly what the variation was, it seems to me, furthers——

THE COURT: I have to determine that.

MR. KRESEL: Will your Honor permit me to confer with Dr. Volwiler. If you will give me two minutes, perhaps we can meet the situation.

THE COURT: Certainly.

(A short recess was then taken by direction of the Court.)

MR. KRESEL: If your Honor please, it took but a minute for me to make plain to Dr. Volwiler that private interests must sometimes give way to necessity, and Dr. Volwiler is quite willing, under your Honor's instructions, to proceed with the testimony in the presence of the chemist employed by the United States. Surely, if your Honor has the assurance of Mr. Knight, who knows this gentleman, that he is a gentleman that may be trusted, we have got to place confidence in somebody, and Dr. Volwiler is willing to place it in this way. So, under the circumstances, we can take the testimony.

THE COURT: Is the chemist here?

MR. ANDERSON: Yes, your Honor—Dr. Gibbs.

THE COURT: Have you any objection to being present at the taking of the testimony concerning the secret processes employed in the factory of this witness, under an assurance that you will not disclose them directly or indirectly or otherwise, or discuss them with any person or persons whatsoever, or make any use of them directly or indirectly, save in connection with this suit in conference with Mr. Knight and Colonel Anderson?

DR. GIBBS: Do I understand your Honor that that would bind me forever, as long as I live?

THE COURT: Forever, sir.

DR. GIBBS: I will consult with my counsel.

THE COURT: All right.

MR. KNIGHT: If your Honor please, Dr. Gibbs would like to make a statement. Some difficulties occurred to him that did not occur to him.

THE COURT: Yes.

DR. GIBBS: It occurred to me, your Honor, that if a thing was made which has been made in this secret record, they are things that I ought to know. There may be things that are known to other chemists that are unrelated to it that I might find by reading later on. It is possible there may be things that would be put into this record that would be discovered, perhaps by men working in my laboratories; and I would feel that I would be put under a cloud by having these things come up in any way which would appeal to me as limiting my chemical usefulness. Colleagues of mine might make these discoveries, and then I would feel that some one might consider I had overlooked something.

THE COURT: I understand. My ruling goes this far, and to a similar extent that the Supreme Court has gone in the Weeks case and other cases in connection with unlawful search and seizure, and that is that an invention discovered on unlawful search and seizure may not be used in the trial of the immediate case; nor may the person making such unlawful search and seizure, and obtaining evidence thereby, use the information thus obtained to secure a further clue, and prosecute on the additional clue; so that in the view of the circumstances, I decline to permit Dr. Gibbs to join in any such conference. You may proceed taking the testimony on the part of the Government as you may be advised.

MR. ANDERSON: I take it, if your Honor please, that it will not be necessary for me to go through the form of asking this witness detailed questions on each of these patents, and to have the objection overruled or sustained, if we can understand that the position here taken applies

to all of that testimony. In other words, I asked a number of questions yesterday afternoon. Of course, the formal procedure would be for me now to examine the witness and merely to ask the question, and the objection would be made and objection sustained and exception taken. I do not want to take up the time to go through that detail if it can be avoided.

THE COURT: In the first place, that is not the procedure, as I understand it. In the second place, I would not permit it, and in the third place, the record is already clear, so that you may proceed.

MR. ANDERSON: Then I wish before concluding with this witness, to make certain motions to strike out his testimony, and I would like to submit those and then, under your Honor's rulings, I will not examine him further.

The first is, I move the Court to strike out question 128, propounded to the witness, Ernest H. Volwiler, on direct examination, and the answer thereto, and question 29 to the witness on direct examination and answer thereto, appearing on pages 3272 and 3278 of the record, upon the grounds stated in objecting to the said questions, and upon the following:

A. That the question calls for the conclusion of the witness.

B. That it is not shown that the witness was properly qualified to answer said questions.

C. It appears affirmatively from the testimony of said witness, and particularly from his cross-examination, that the witness had no personal knowledge as to the process used at the plant of the Dermatological Institute in the pro-

duction of salvarsan and neosalvarsan, and that his answer to these questions was hearsay.

D. That the witness testified affirmatively on cross-examination, that he never himself carried out or attempted to carry out, the process for the production of salvarsan and neosalvarsan given in the two patents offered in evidence and covering said products, but had only made or attempted to make some of the intermediates used in said process.

E. That the witness testified on cross-examination that he was unable to state just what the processes were which were used by the Dermatological Institute in the production of salvarsan and neosalvarsan, and which he claimed were different from the process outlined or specified in the patents offered in evidence and covering said products.

That is the first motion. The second motion I desire to submit is to strike out Q. 132 to the witness, Ernest H. Volwiler, on direct examination and the answer thereto, and Q. 133 to said witness on direct examination, and answer thereto appearing at page 3279 of the record, on the ground stated upon the record in objections to said questions, and in addition thereto as follows:

A. That the question calls for the conclusion of the witness.

B. It is not shown that the witness was properly qualified to answer said questions.

C. It appears affirmatively from the testimony of said witness and particularly from his cross-examination that the witness had no personal knowledge as to the process used at the plant of the Dermatological Institute in the pro-

duction of salvarsan and neosalvarsan, and that his answer to these questions was hearsay.

D. The witness testified affirmatively on cross-examination that he had never himself carried out, or attempted to carry out, the process for the production of salvarsan and neosalvarsan given in the two patents offered in evidence and covering the said products, but had only made or attempted to make some of the intermediates used in said process.

E. The witness testified on cross-examination, that he was unable to state just what the processes were which were used by the Dermatological Institute in the production of salvarsan and neosalvarsan, and which he claimed were different from the process outlined or specified in the patents offered in evidence and covering said products.

F. The said questions called for evidence that is immaterial in this case.

G. It appears affirmatively from the testimony of said witness on direct examination that the Dermatological Institute, prior to its purchase by the Abbott Laboratories and subsequent thereto, has vended and sold the said products under representations and statements in writing to the effect that the said products were manufactured under licenses issued by the Federal Trade Commission and later by the defendant, The Chemical Foundation, under the said patents offered in evidence, covering respectively salvarsan and neosalvarsan.

H. The said witness testified upon cross-examination that the products manufactured and sold by the Dermatological Institute were identical with the products known as salvarsan and neo-

salvarsan, as described in the patents covering said products and referred tc by the said witness.

Then a further motion I wish to make is that the plaintiff moves to strike out Q. 134 as to the witness, Ernest H. Volwiler, and the answer, on page 3279 of the record, and Q. 135 and answer thereto, appearing on page 3280 of the record on the grounds stated in objecting to said question, and in addition thereto, the additional grounds stated above, which are grounds referred to in the foregoing motion as to the question, and will not be repeated unless desired.

I wish to submit the following motion:

Plaintiff moves to strike out all of the testimony of the witness, Ernest H. Volwiler, concerning whether salvarsan or arsphenamine could be made, produced or manufactured under United States patent, the number stated in the record as to those two products, and to each question and answer relating thereto, for the reasons stated in the objections to said questions and for the further reasons, to wit:

That said testimony is immaterial and irrelevant to any of the issues in this suit; that said witness has testified that his testimony was not based upon facts within his personal knowledge; that said testimony is based upon hearsay; that said testimony is based upon records of the Dermatological Research Laboratories which the witness did not keep and which were not kept under his direction and in which books he did not make the entries relied upon and which said entries were not made under his direction; that said testimony is a collateral attack upon the validity of a patent the issue of which has been proven and the validity of which is presumed,

until proven otherwise in a direct attack thereon; that the evidence in this suit shows that the defendant herein claims title to said patent and has issued several licenses thereupon and is estopped to deny the validity thereof; that the evidence in this suit shows that the Abbott Laboratories, which the witness represents, is operated under license issued under said letters patent and is marking goods stated to be manufactured thereunder and is therefore estopped to deny the validity of said patent.

Exactly the same motion as to the patent on neosalvarsan or neoarsphenamine.

The same motion as to the novocain patent, or procaine; cinchophen, neocinchophen, acriflavine and proflavine, each, excepting that portion of the motion which states that the witness has testified that his testimony was not based upon facts within his personal knowledge; that said testimony is based upon hearsay; and that said testimony is based upon records of the Dermatological Research Laboratories, which the witness did not keep and which were not kept under his direction and in which books he did not make the entries relied upon and which said entries were not made under his direction. That portion of the motion applies only to the salvarsan and neosalvarsan patents. The motion with those lines stricken out is asked to be applied to each of the other patents named.

The plaintiff now moves to strike out all the testimony of the witness, Ernest H. Volwiler, concerning the cost to the Abbott Laboratories, or the amount of money expended by said Abbott Laboratories in research in perfecting the processes for the manufacture of novocain or pro-

caine, and each question and answer of said witness relating thereto for the reasons stated in objections to said questions and each of them, and for the following further reasons: That said testimony is irrelevant and immaterial to any of the issues in this suit; that said testimony shows that the answers are made on facts not within the knowledge of the witness; that the amounts so stated by the witness in answer to questions propounded to him, included items not within the personal knowledge of the witness; that the amounts so stated by the witness in answer to questions propounded to him included items which are not segregated or separated in the total amount so stated, which items are based upon hearsay; that the amounts so stated by the witness in answer to questions propounded to him included items which are not separated or segregated in the total amount so stated by him which are based upon the books of the Abbott Laboratories, which books the witness has stated were not kept by him or under his direction, and which he has not examined and in which no entries were made by him or under his direction.

I would ask that the same motion apply to the testimony of the witness as to salvarsan or arsphenamine; neosalvarsan or neoarsphenamine; cinchophen and neocinchophen; acriflavine and proflavine.

I further move the Court to strike out all the testimony of the witness Ernest H. Volwiler, concerning the value of the patents as to which he has testified, including the so-called salvarsan patent, neosalvarsan patent, novocain or procaine, cinchophen, neocinchophen, acriflavine and proflavine, and to strike out each question and answer relating thereto, for the reasons stated

in the objections to said questions and for the further reasons, to wit, that the evidence shows that the witness is not properly qualified to give an opinion as to the value of these patents or any of them.

THE COURT: The motions are severally denied. You may proceed with the re-direct, Mr. Kresel.

RE-DIRECT EXAMINATION.

By MR. KRESEL:

RDQ. 804. Dr. Volwiler, upon your cross-examination, counsel put an illustration to you with reference to your testimony that you could not produce these products under the patents. He said to you, you will recall, that it was like someone trying to prepare a meal according to recipes in a cook book. You recall that?

A. I do.

RDQ. 805. And he pointed out that some cooks could prepare according to the recipe a pretty good meal and others could not. Now, with these patents that you have been discussing, did you have the information or, the technical term used by you chemists, the know-how, the practical knowledge of how to perform the operations under the patents?

A. I did not.

MR. KNIGHT: May I ask Mr. Kresel what particular patent he is referring to?

MR. KRESEL: I am speaking of all of them, all those that he discussed.

RDQ. 806. You understand my question to cover that?

A. My answer was with that assumption in mind.

RDQ. 807. Colonel Anderson also asked you whether it was a fact that you did not know how the

Germans prepared the intermediates used. Do you recall that?

A. I do.

RDQ. 808. In your testimony you pointed out that there was no description in the patents of how to make the intermediates and that you had to find out?

A. That is true.

RDQ. 809. With reference to novocain, you testified that by following out the method described in the patent you got a tarry product, a toxic product, which, however, was called novocain. You recall that?

A. Yes, sir.

RDQ. 810. But that by following the method described in the patent of Adams and Kamm, you got the product which you are now selling under the name of novocain. You recall that?

A. That is true.

RDQ. 811. Now, I wish you would state what difference in the product there was between what you obtained by following the method described in the patent, the German patent, and the method that is described in the Adams and Kamm patent, especially referring, if you will, to the yield and to the purity of the product. Have I made my question plain to you?

A. I think so.

RDQ. 812. Will you answer it, please?

A. The procaine process as described in the German patent is a rather long one, and the over-all yield—and by over-all yield I mean on the basis of the starting materials—the yield obtained of the final product, that is procaine, was not much above 10 per cent. of the theoretical, and in certain cases, that is, in certain experiments, it would run considerably below 10 per cent.; whereas, when we used the Adams

and Kamm method as patented, the over-all yield ran in the neighborhood of 50 per cent. of the theoretical, the product that we obtained was of a higher state of purity, was easier purified, and the final purified product was of low toxicity.

RDQ. 813. Which product was?

A. Procaine.

RDQ. 814. Manufactured under which patent?

A. Under the Adams and Kamm patent.

RDQ. 815. Was it possible for the Adams Laboratory to commercially manufacture novocain under the German patent, obtaining a 10 per cent. or less than 10 per cent. theoretical yield?

A. We did not consider it possible, because we were trying to produce procaine at a reasonable price.

RDQ. 816. You were asked yesterday the question whether or no, so far as you knew, other manufacturers who were making novocain were making it under the German patent, and you said that, as far as you knew, it was so. Have you any knowledge on the subject at all?

A. I have not. I have never been in any of such plants.

RDQ. 817. So that if I put the question the other way, that, so far as you know, the other manufacturers of novocain were not using the German patent, what is your answer to that?

A. So far as I know, they were not.

RDQ. 818. It was pointed out to you on cross-examination that on the labels on the various phials that were shown here, of novocain, cinchophen, neocinchophen and the other products that you described, salvarsan and neosalvarsan, that are put out by the Abbott Laboratories, there is a statement that the products are manufactured under license covering a certain patent, giving the number of the patent which

corresponds with the German patent here in evidence. You recall that?

A. Yes, sir.

RDQ. 819. Your testimony is that the products were manufactured by methods other than those described in those patents, is it not?

A. That is true.

RDQ. 820. Will you state why the statement on the label is to the effect that the product was being put out under license covering the German patent?

MR. KNIGHT: It seems to me, your Honor, that goes beyond the function of this witness, to explain these statements on these labels.

THE COURT: You asked him, did you not, with respect to the label?

MR. KNIGHT: Yes, we identify the product as the product of their factory, and the label was read.

THE COURT: Is it your contention, Mr. Knight, that he is estopped from showing the reason for the statement on the label?

MR. KNIGHT: I submit that this witness may not know the reason for the label.

MR. KRESEL: Of course, if he does not know Mr. Knight, he will say so.

RDQ. 821. Do you know the reason?

A. I do.

MR. KNIGHT: Perhaps if we know his reasons we may find some——

THE WITNESS: Were you asking me a question, Mr. Kresel?

MR. KRESEL: Yes. Will you please state it?

THE COURT: Is the objection pressed or is it withdrawn?

MR. KNIGHT: I would like to hold it in abeyance until we find out his reasons.

THE COURT: All right, you may inquire about his reasons, and then make such objection or motion as you may be advised.

RDQ. 822. Will you please state it?

A. May I have the question read again?

(RDQ. 820 read as recorded above.)

A. Most of these patents are product patents, so that no matter what method we used, our method is covered by the German patent taken out in the United States. There is one exception, and that is cinchophen, which is a process patent. The reason that we are continuing our operation under license on cinchophen is that if we cancelled our license it might lead to a lawsuit and involve more expense than the payment of the royalty involved, and might, furthermore, necessitate the divulging of the method or portions of the method which we are employing at present in making cinchophen.

MR. KNIGHT: Does that complete your reasons?

THE WITNESS: So far as I can think now, yes.

MR. KNIGHT: I withdraw the objection.

RDQ. 823. Dr. Volwiler, you testified that following the German patent for acriflavine and proflavine you could not make it at all. Do you remember that?

A. That is true.

RDQ. 824. Will you please state why?

A. There is one step left out in the process——

MR. ANDERSON: Your Honor will recall that I did not cross-examine on acriflavine or proflavine because he stated it was a trade secret.

THE COURT: You were given the opportunity to cross-examine if you desired, and you waived it. You may proceed, Mr. Kresel.

MR. KNIGHT: I would like to submit that this is hardly re-direct, then.

THE COURT: No, it would be as in re-call. But if the objection is on that ground, that that is not strictly re-direct but should be anew, that will be sustained. I did not understand that that was the objection. That was your objection?

MR. ANDERSON: I did not cross-examine on that, and, of course, that meant there could not be any re-direct upon it.

THE COURT: The objection having been raised that this is not strictly re-direct, I will sustain the objection.

MR. KRESEL: Will not your Honor, in your discretion, permit me to ask this question?

THE COURT: No; because if you want that question you may ask it under the recall of this witness.

MR. KRESEL: Then may it be considered that I have recalled him for that purpose?

THE COURT: Yes.

MR. KRESEL: Will you continue the answer to the question, please?

A. (continued). The German patent taken out in the United States for the production of acriflavine and proflavine is absolutely unworkable because there is one essential step completely left out. By following the method as given in the patent it is impossible to get any compound of the nature of acriflavine, because acriflavine and proflavine are acridine compounds, and the acridine nucleus or series cannot be obtained by the method. The step that is left out is an oxidation of one compound, one intermediate given in the patented method, by ferric chloride. A few years—I do not know whether it is a few years, but some time after the patent was taken out—essentially

the same method was published in the German literature, in some chemical journal, with this extra step put in, and that enabled the acriflavine to be produced by the patented method, provided that extra step was put in. The method was not yet satisfactory, even with the step put in on account of the low yield. But so far as I know, no patent has ever been taken out in this country by the Germans with that omitted step included in the process.

MR. KRESEL: That is all.

THE WITNESS: If you wish, for the sake of completeness of the record, I, by reference to the patent on file, can point out the exact line where the step is omitted.

MR. KNIGHT: That was going to be my sole question on re-cross.

MR. KRESEL: Yes. I will take the patent, which is Defendant's Exhibit No. 154.

RDQ. 825. Is this it (handing witness)?

A. It is.

RDQ. 826. Will you point that out, Doctor, please?

A. In the patent No. 1,500,176, which is Defendant's Exhibit 154, at line 96, the statement is made: "On cooling, diaminoacridin separates completely in the form of tin double salt as shining brownish crystals." That statement is not correct, because that is where the step is left out. In order to obtain diaminoacridin the intermediate obtained in the previous sentence must be oxidized and by no process except oxidation can diaminoacridin be obtained.

RE-CROSS-EXAMINATION.

By MR. KNIGHT:

RXQ. 827. Is this previous oxidation the matter which you say was published in the publication in Germany later than this patent?

A. Yes, sir. I did not get the last part of your question.

RXQ. 828. Is this previous oxidation which you refer to the matter which you say was published in the German publication?

A. Yes, sir.

RXQ. 829. Later than the date of this patent?

A. Yes, sir. I do not remember the exact date.

RXQ. 830. And do I understand you to say that was a matter not known until the publication, by the chemists in this country?

A. Yes, sir, to the best of my knowledge it was not known, because I know that not only my company or our company, but also other chemists throughout the country have tried to follow this patented method, and their uniform result has been absolute failure. And then, upon more careful examination and consideration, and in view of this later article which came out, it has been understood what was omitted to make the patent workable.

RXQ. 831. How much later was this article? Do you mean later than the grant of the patent, later than the German patent, or later than the application for this patent?

A. I don't remember. It was later than this patent was available, I think.

RXQ. 832. Can you give us any data whereby we can find this German article?

A. Yes, sir. It was an article by Benda in Berichte der Deutschen Chemischen Gesellschaft, and it appeared some time between 1911 or 1912 and 1915. That is the well-known German chemical journal, so I think there will be no difficulty in locating it.

RXQ. 833. I show you a package purporting to contain, by its label, acriflavine, and bearing the imprint of the Abbott Laboratories, Chicago, U. S. A.

Do you recognize that as the product of the Abbott Laboratories (handing witness)?

A. I do.

XQ. 834. And you will notice that this label, after giving the title of the drug and the chemical name, says, "Licensed by the Chemical Foundation, Inc., under U. S. Letters Patent No. 1,005,176," that is correct, is it not?

A. So far as I know, yes.

XQ. 835. And that is the form of label which was used by the Abbott Laboratories on the products of this character?

A. That is true.

MR. KNIGHT: That is all, your Honor.

MR. KRESEL: That is all, Doctor.

(Witness excused.)

MR. KRESEL: With your Honor's permission and Colonel Anderson's consent, I should like to interrupt the examination of the accountant, which examination would naturally proceed now, to call some witnesses who are from out of town. Before even calling them, I have to call a witness who is a resident here, but who will be but a very short time. I will call Mr. Thompson.

HENRY B. THOMPSON.

HENRY B. THOMPSON, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 1. Your full name, please?

A. Henry B. Thompson.

Q. 2. And your residence?

A. Greenville, Delaware.

Q. 3. And your business?

A. I am the president of the United States Finishing Company, which is a Connecticut corporation engaged in the printing and dyeing and bleaching of cotton goods. We have five plants, two in Connecticut, three in Rhode Island, with an annual output of about 300,000,000 yards a year.

Q. 4. Mr. Thompson, during the war were you a member of any committee in connection with the importation of dyes?

A. I was chairman of the so-called Dyes Committee, advisor to the War Trade Board.

Q. 5. How many members were there of that committee?

A. Seven.

Q. 6. Could you name them, please?

A. There were three representing the textile interests; Mr. Cheney, representing the silk industry; Mr. Hobbs, the woolen industry; and myself, the cotton. There were three members representing the manufacturers of dyes; Mr. Poucher, Mr. Merz, and Mr. Watkins, and Dr.——

Q. 7. Pardon me a minute. Mr. Poucher was of what company?

A. The duPont Company.

Q. 8. And Mr. Merz?

A. Heller & Merz.

Q. 9. And who was the third?

A. And Mr. Watkins, representing the National Aniline; and Dr. Herty, representing the chemical associations.

Q. 10. What is Dr. Herty's first name, do you know?

A. Charles, I believe.

Q. 11. So there was this committee of seven. And who appointed this committee?

A. The War Trade Board.

Q. 12. Did you gentlemen take an oath of office?

A. Yes; we were sworn in, took an oath of office and were virtually officers of the Government during our incumbency.

Q. 13. Have you any connection with any trade organization of the Cotton Finishers?

A. I was president up till the 1st of January for some six or seven years of the National Association of Finishers of Cotton Fabrics, which is an association made up of some sixty firms or corporations and represents very largely the entire industry.

Q. 14. Have you taken any part in the way of testimony before Congressional Committees upon questions affecting your industry and the dye industry?

A. I have testified three different times before the Committee on Ways and Means, the Hill Bill Hearings and twice before the Senate Finance Committee.

Q. 15. In connection with your appearance before the Committee that had in charge what is known as the Hill Bill, do you recall having a conference with the President upon the matter?

A. I do.

Q. 16. Could you fix the date of that conference?

A. It was either the 15th or 16th of January, 1916.

Q. 17. And where did you have the conference with the President?

A. At his office in the White House.

Q. 18. And this was President Wilson?

A. President Wilson; yes, sir.

Q. 19. Could you state, as near as you can recall, the conversation that you had with the President upon this subject of the dye industry?

A. Being in Washington for the hearing, it occurred to me that I would like, if possible, to secure the President's interest in the matter of the Tariff legislation in regard to the Hill Bill; and in order to get a hearing, I called on Mr. McAdoo, Secretary of the

Treasury, and I explained to him the conditions that obtained at that time due to the scarcity of dyes; that the supply of German dyes was virtually exhausted and that the dyes that were being made by American manufacturers were inadequate for our wants, and that we felt we must do something to encourage a greater output on the part of the American manufacturers; and that there was another matter, which I believe had been called to my attention by Dr. Herty, which I believed was of the utmost importance, the relation between the manufacturing of dye stuff and the manufacturing of munitions.

Mr. McAdoo immediately said he thought that that was a very important point and that without question I should communicate that information to the President. I asked him how I would get in touch with the President, and he said, "I think the information that you have given me is sufficiently important to warrant my going over with you and seeing that you see the President at his earliest convenience."

Q. 20. May I interrupt you there a minute? Did you have a personal acquaintance with the President at that time?

A. Yes.

Q. 21. You may proceed.

A. Mr. McAdoo took me, went over with me, to the White House, and told Mr. Tumulty that he would like me to see the President as soon as possible; that I had a matter that he thought was important and would interest the President.

After some half hour waiting, I was taken in to see President Wilson. He asked me what brought me to Washington. I told him, "The seemingly impossible task of attempting to convert a democratic Congress to the protective theory."

I then explained to him at length just what I had said to Mr. McAdoo, the necessity of starting an

American industry in dyestuffs to relieve the famine and the necessity of some legislation to protect that industry from the German competition at the close of the war.

I also explained at length to him the relationship that existed between the manufacture of dyestuffs and high explosives and I particularly referred to the fact that the Badische Company which had been probably one of the largest importers of dyestuffs into America was at that time possibly one of the largest sources of supply to Germans in their chemical warfare service.

Q. 22. Would you be a little more specific as to what you told the President with reference to the relation of the dye industry to the question of munitions?

A. Well, it was substantially what I stated. I was not conversant with exact details, but I did explain to him that a dye factory or a dye manufacturing plant could be turned immediately, the same personnel, the same management, could be turned into a factory for the manufacture of high explosives and that such an industry would be available for the use of this country in case of war.

Q. 23. Have you stated substantially the conversation?

A. Yes; the conversation probably took some 15 minutes. I think that I covered the points in the brief statement that I have made. Of course, particular emphasis was on the two points; the necessity for the establishment of the industry for the benefit of the American consumer of dyes and as a war measure in the manufacture of munitions.

Q. 24. And what did the President say?

A. The President listened to me and the one statement that he made that I remember was: "A protective policy is rather opposed to the present policies of

our party." But he gave me his entire attention and when I got through I left him.

Q. 25. Is your company a user of dyes?

A. Yes, sir.

Q. 26. To a large extent?

A. Yes, sir.

Q. 27. Could you tell us approximately how many thousands of pounds of dyes you use annually?

A. I could not tell you in pounds. I should suppose in dollars we would use between six and eight hundred thousand dollars worth of aniline dyes.

Q. 28. Before the outbreak of the European war, did your company use dyes?

A. Yes, sir.

Q. 29. And where did your supply come from then?

A. We purchased from the German importers representing the five German manufacturers.

Q. 30. Did you get any dye supply from American manufacturers at that time?

A. No, sir, as far as I know—I think that is correct. There was one American manufacturer in a small way, Schoellkopf, but I do not think that we purchased from them.

Q. 31. Now, since 1914, from what sources has your company been buying its supply of dyes?

A. Well, from 1914 to 1917, we were largely dependent on the stocks that we carried over from our purchases from the German houses. In 1917, we began to purchase in a small way from some of the American manufacturers, who were starting up the industry in this country.

Q. 32. Can you give us, or could you mention the names of some of the most important dyes that you use in your industry, I mean your particular business?

A. Yes, sir, I have a list here that covers what would be known as the principal dyes that would be

used in cotton printing and dyeing, covering some 16 colors, with the prices that we paid for those colors during the years 1919, 1920, 1921 and 1922 and 1923; and I have a list of the manufacturers from whom we were buying these colors.

MR. KRESEL: I am going to show a copy of this list to counsel.

Q. 33. Would you state, please, from how many concerns your firm now buys dyes?

A. We are buying today from sixteen.

Q. 34. American or foreigners?

A. American.

Q. 35. American concerns. Now, as to——

A. There is one firm included in that, H. A. Metz & Company, who are also agents for the German goods, but they are also manufacturers of American goods.

Q. 36. I see. H. A. Metz & Company is one of the sixteen that you have mentioned?

A. Yes, No. 10 on the list.

Q. 37. Now, with reference to the various dyes which you have enumerated on this list that you have before you, have you given there the number of manufacturers from whom you have bought each of these dyes?

A. Virtually, if I understand your question. I do not mean to say that we could buy all of those dyes from the entire sixteen names that I have given there; but as it is today, we can get from probably one of three or four out of this list, each one of the colors that I have named on the list.

Q. 38. That is what I was trying to bring out; that is, all these colors that you have on the list, you can buy from at least three or four different concerns?

A. Yes, sir.

Q. 39. Now, as to prices, you have shown on this list the prices that you were paying for these various

colors beginning with 1919. Take as an example the first of these dyes. You describe it as what?

A. Auramine, concentrated.

Q. 40. What were you paying for it in 1919?

A. $3.20 a pound.

Q. 40a. And what are you paying for it now?

A. $2.45 a pound, a reduction of twenty-three per cent.

Q. 41. Is it a fact, without my going into all the figures of this statement, that in the case of each of these dyes or colors that you have listed here that you have been using in your business, the price of each has gone down since 1919?

A. Without any exception.

Q. 42. And you have here given us the percentages of the decrease in the price?

A. Yes, sir.

MR. KRESEL: Now, Colonel Anderson, I am going to offer that in evidence.

THE COURT: Why not let it be spread upon the record at this point, the same as if testified to in detail by the witness?

MR. KRESEL: I think that is a very good suggestion, your Honor. It is not very long.

THE COURT: Hand it to the stenographer and save it being marked as an exhibit.

MR. KRESEL: Please do that.

The paper is as follows:

Colors	1919	1920	1921	1922	1923	Percentage Decrease 1919-1923	No. of Mfgrs.
Auramine, Conc. Basic	3.20	3.40	2.50	2.50	2.45	23%	3
Methylene Blue Basic	2.70	2.85	1.70	1.20	1.20	56%	4
Methylene Blue, Zinc Free Basic	3.00	3.00	2.25	1.75	1.75	42%	4

Safranine Basic Colors	1919	1920	1921	1922	1923	Percentage Decrease 1919-1923	No. of Mfgrs.
Bismarck Brown Basic	.90	.90	.75	.67	.55	39%	6
Direct Brown	1.50	1.50	1.25	1.00	.90	40%	3
Direct Black	1.90	1.90	1.90	.85	.69	64%	3
Direct Blue	.68	.68	.50	.40	.38	44%	4
Direct Sky Blue	5.00	3.75	2.72	2.50	2.50	50%	4
Victoria Blue Basic	5.10	5.05	3.00	2.00	1.95	61%	3
Benzopurpurine, Direct 4 B Conc.	1.80	1.80	1.00	.90	.85	53%	2
Direct Green	2.10	1.95	1.25	1.25	1.00	52%	3
Malachite Green Basic	3.00	2.70	1.65	1.05	1.25	59%	2
Safranine Basic	4.25	3.55	2.50	2.00	1.60	62%	3
Taztrasine Acid	1.50	1.50	1.45	.80	.75	50%	3
Methyl Violet Basic	2.35	3.10	1.26	1.15	1.15	51%	4
Chrysophonic Direct	7.25	6.50	3.75	2.40	2.40	67%	3

List of Principal Manufacturers From Whom we are Buying Goods:

1. Atlantic Dyestuff Company
2. Calco Chemical Company
3. John Campbell & Company
4. Giba Company, Inc.
5. E. I. DuPont de Nemours & Co.
6. Geigy Company, Inc.
7. Grasselli Chemical Company
8. Heller & Merz Company, Inc.
9. Harietta Refining Company.
10. H. A. Metz & Co. Inc.
11. National Aniline & Chemical Co.
12. Newport Chemical Works
13. Sandez Chemical Works
14. Butterworth, Judson Corp.
15. A. Franken, Color Works
16. Pharma-Chemical Corporation

Q. 43. Mr. Thompson, in your business, in the purchasing of dyes, have you found that you had offerings of dyes from various American concerns?

A. Have we had offerings?

Q. 44. Yes.

A. Yes, we have had offerings from all the firms that I have named.

Q. 45. Have you observed that there was any indication that there was any understanding or combination among these manufacturers of dyes as to prices supplied?

MR. ANDERSON: I object. The gentleman can testify, of course, as to who he buys from and the prices, and any fact in connection therewith.

MR. KRESEL: If there is objection, I recognize the validity of it, and I will withdraw the question. You may cross-examine.

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 46. Mr. Thompson, have you the prices of these same dyes included in the list which you handed the stenographer for the years 1913 and 1914?

A. I have the same records, those that this was taken from, in our office, yes, sir.

XQ. 47. You have not the data with you?

A. I have not got it with me.

XQ. 48. Would you be kind enough to have prepared a statement of the prices to you of the same dyes, that you paid in 1913, making up the list in exactly the same order as is stated here, and send it down after you return home?

A. Yes, sir, in so far as I can, I presume I can give you the same colors, because they are the leading colors in use.

XQ. 49. And you will send that information to Mr. Kresel, who will turn it over to me, if you please?

A. Yes, sir.

MR. ANDERSON: That is agreeable; and I would like to be understood now that that statement will be put in evidence when it is received.

MR. KRESEL: There is no objection.

XQ. 50. You stated that you were appointed chairman of a committee to advise the Department of Commerce on the importation of dyes?

MR. KRESEL: Not the Department of Commerce—the War Trade Board.

A. The War Trade Board.

XQ. 51. Do you know who nominated that committee to the War Trade Board?

A. Who nominated it?

XQ. 51. (Continued.) Yes.

A. I do not know; no sir.

XQ. 52. Did you know that it was nominated by Mr. Choate and Dr. Miller?

A. Did I know that?

XQ. 52. (Continued.) Yes.

A. No, I never heard that before, sir.

XQ. 53. You know Dr. Miller, do you not?

A. Dr. Miller?

XQ. 54. Of the National Aniline, I think.

A. No, sir.

XQ. 55. Do not know him?

A. I may have met him, but I do not know him by name.

XQ. 56. Mr. Thompson, you have given lists here of the various houses from which you purchased dyes and the number of manufacturers from which you purchased the dyes. That is what I understand to be the last column; is that right?

A. Yes, sir.

XQ. 57. Do you know whether each of the houses from which you purchased the particular dyes listed under heading of "colors" are manufacturers of those

particular dyes, or are they dealers in them, or do they buy them. Do you understand what I mean?

A. I should suppose, looking at this list, they were all manufacturers.

XQ. 58. You do not know of your own knowledge?

A. Well, I should be inclined to say that they were all manufacturers of these dyes.

XQ. 59. But I asked you if you knew whether, for instance, you purchased methylene blue basic from four persons; you headed them as manufacturers?

A. Yes.

XQ. 60. Do you know whether those four persons in fact manufacture methylene blue, or do they buy it from other manufacturers?

A. No, these are bona fide manufacturers, if that is your question, as I understand it.

XQ. 60. (Continued.) Yes.

A. They are not dealers, any of the names that I have given you.

XQ. 61. Where are the works of the Atlantic Dyestuffs Company located?

A. I do not know, sir.

XQ. 62. They are not in Connecticut, are they?

A. I could not tell you. I do not know.

XQ. 63. Where are the works of the Calco Chemical Company located?

A. They are at Bound Brook, New Jersey.

XQ. 64. Where are the works of John Campbell & Company located?

A. I could not tell you.

XQ. 65. Where are the works of the Ciba Company, Inc., located?

A. I do not know.

XQ. 66. Where are the works of the E. I. duPont de Nemours & Co. located?

A. They are located at——

XQ. 67. At Wilmington, Delaware?

A. Deep Water Point.

XQ. 68. Where are the works of the Geigy Company located?

A. I think that is a New Jersey corporation.

XQ. 69. Where are the Grasselli Chemical Company Works located?

A. I am under the impression that is Jersey City. I am not positive.

XQ. 70. Where are the works of Heller & Merz Company, Inc. located?

A. They are in New Jersey, near Elizabeth, I think.

XQ. 71. Where are the Marietta Refinishing Works located?

A. I do not know.

XQ. 72. Where are the H. A. Metz Company, Inc. located?

A. I think their works are in New Jersey.

XQ. 73. The National Aniline & Chemical Company?

A. They have several plants. There is one in Buffalo. There is one here at Marcus Hook.

XQ. 74. What state?

A. Delaware.

MR. KRESEL: Pennsylvania.

A. (Continued.) It may be Pennsylvania. It is right on the border line.

XQ. 75. The Newport Chemical Works are in Chicago, are they not?

A. No, they are in Passaic, I think, New Jersey.

XQ. 76. Sandoz Chemical Works?

A. I could not tell you.

XQ. 77. Butterworth-Judson Corporation?

A. That is a New Jersey corporation.

XQ. 78. A. Franklin Color Works?

A. I do not know them; that is, I do not know where their works are located.

XQ. 79. You do not know the other two?

A. No, sir.

XQ. 80. You said your plants were located where, Mr. Thompson?

A. We have one plant in Norwich, Connecticut, another in Sterling, Connecticut, a third plant at Pawtucket, Rhode Island, and two in Providence, Rhode Island.

XQ. 81. And these dyestuffs that you purchased from these various companies are shipped from their plants to your various plants as ordered, I suppose?

A. They go, as far as I know, direct from the manufacturer to the plants. Our New York office is simply an office for clerical help.

MR. ANDERSON: That is all.

(Witness excused.)

FRANKLIN W. HOBBS.

FRANKLIN W. HOBBS, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 1. Mr. Hobbs, where do you reside?

A. Boston, Massachusetts.

Q. 2. And what is your business, please?

A. I am the president of the Arlington Mills. We are manufacturers of fabrics for men's and women's wear—worsted goods.

Q. 3. I should like you to give somewhat the extent of your business, if you will. For instance, how many yards of woolen clothes does your concern put out per week?

A. We manufacture about 380,000 to 400,000 yards of worsted fabrics a week. We use about 75,000,000 pounds of wool per year, and employ 7800 people. Our weekly payroll is about $180,000.

Q. 4. Where is your plant located?

A. The chief plant is at Lawrence, Massachusetts, and we have a small branch, weaving, dyeing and finishing only, at North Adams, Massachusetts.

Q. 5. Do you know Mr. Thompson, who preceded you on the witness stand?

A. Very well.

Q. 6. Were you a member of this Advisory Dyes Committee of the War Trade Board?

A. I was.

Q. 7. I did not ask Mr. Thompson as to the duties of that committee. May I inquire that of you?

A. We received instructions from the War Trade Board by letter and also by conference, and it was the general policy that we were asked—it was an advisory capacity to the War Trade Board with reference to the requirements of this country for foreign dyes, particularly German dyes, and as to the advisability or otherwise of the admission of those dyes to take care of the requirements as they arose in this country for the different consumers of dyes.

Q. 8. When was this committee appointed?

A. We were appointed the 8th of May, 1919 is my recollection, and were sworn in shortly after that, but it was effective under date of May 18, 1919.

Q. 9. Please look at this paper and state whether you find there a copy of the resolution of the War Trade Board organizing this committee?

A. I do.

MR. KRESEL: I should like to read into the record, Colonel Anderson, a copy of this resolution.

MR. ANDERSON: I have no objection.

MR. KRESEL: I read as follows.

MR. ANDERSON: Mr. Kresel, would you mind stating just from what source that is taken?

MR. KRESEL: I read from a letter of Mr. Dix-

on of the Department of State to Mr. Hobbs, dated December 12, 1921, giving these extracts from the minutes.

MR. ANDERSON: I just want to know the source, so I can verify it.

MR. KRESEL: I read as follows:

"It appears from the records of the War Trade Board that the following resolution was adopted on the 8th day of May, 1919:

"'WHEREAS, the Associated Governments have determined that Germany shall be permitted to export dyes and dyestuffs to the countries of said governments, subject, however, to such municipal limitations as may be prescribed by the respective governments of the countries aforesaid; and

"'WHEREAS, in view of the action of the Associated Governments hereinabove recited, it is necessary that the War Trade Board formulate rules and regulations which shall govern and control the importation into the United States of dyes and dyestuffs produced or manufactured in Germany; and

"'WHEREAS, the War Trade Board desire in formulating such rules and regulations to avail themselves of the advice and assistance of competent representatives of the industries in the United States which are engaged in the manufacture and use of dyes and dyestuffs;

"'*Resolved*, that the War Trade Board do hereby establish an Advisory Committee on Dyes of the War Trade Board, whose function shall be to consider and study the dye situation in the United States and to make the War Trade Board recommendations with respect to the rules and regulations which should govern the importation into this country of dyes and dyestuffs produced or manufactured in Germany and particularly with respect to the character of these dyes and dyestuffs whose importation will accrue to the benefit of the United States;

"'*Further Resolved*, that the War Trade Board do hereby appoint the following gentlemen as members of the above-mentioned Advisory Committee on Dyes of the War Trade Board: Franklin W. Hobbs, Boston, Massachusetts,'"

And then the other six that were mentioned by Mr. Thompson.

Q. 10. Mr. Hobbs, please state to what extent your firm was a user of dyes?

A. We use from $350,000 to $600,000 or $700,000 a year—of strictly the color, that is; all the chemicals and things are in addition to that; but of dyes, straight color dyes, about that amount.

Q. 11. Before the outbreak of the European War from what sources did you buy your colors or dyes?

A. Almost entirely from the German importer. We bought small amounts from Shoellkopf at Buffalo, and possibly one other; but approximately 95 per cent, I should say, was from representatives of the German dye manufacturers.

Q. 12. Since 1914 have you been able to obtain dyes in the American market?

A. We have.

Q. 13. Have you prepared a statement showing the principal dyes used in your business and the dates when and the names of the firms from whom you were able to purchase those dyes?

A. I have.

MR. KRESEL: Colonel, here is a copy (handing paper). I am sorry it is the only copy I have.

Q. 14. Will you first give us the names of the principal dyes used in your business?

A. A very great percentage of our business is the serge business, and the four chief colors that we use, one a small amount of, are: Chrome blue, which is Schultz No. 181; Sulphon Acid Blue R, which is Schultz No. 188; Sulphon Cyanine 5 R, which is

Schultz No. 257; and the Diazine Black H. Extra, Schultz No. 333; and the Naphtylamine Black 10 B, Schultz No. 217. Of the latter we do not use so much. The first four are the chief dyes we use.

Q. 15. Will you please state when those dyes became available to you from American manufacturers, giving the names of the manufacturers and the date when?

A. In the list that you have there, the first dyes there are those used during the war. Do you wish me to refer to those?

Q. 16. Yes. What do you mean, used during the war, for what purpose?

A. In the early part, before we were in the war, we first obtained a blue called gallocynanine from W. Beckers located in Brooklyn in 1915. Then in 1917 the American Aniline Products Company made some. In 1918, Metz offered that color and then in 1918, in June, Marden, Orth & Hastings also offered it.

At that time we were running, of course, on civil business, and making the blue. Then in 1917 we turned over almost the entire plant to the manufacture of uniform cloths for the army and there then became available from Beckers alizarine yellow 2 G., Schultz No. 48, which was used in making O. D. uniforms and shirting cloths for the army. Soon after that, the U. S. Color & Chemical Company and some from the Bayer Company, Farbwerke-Hoechst, the Badische Company, John Compbell; and the American Aniline Products Company came a little later.

Then we used with that a chrome brown, which Beckers first produced in 1917 and the National Aniline in 1918 and then later on the Calco Company and DuPont and several others came in. But up to the end of 1918, those were the dyes that we were running 80 per cent. of our production on for the Government.

Then to get down to the present day, our regular

civilian business, in July, 1918, this chrome blue or black we first had offered us by the National Aniline; then in March, 1919, the Grasselli Company; in December, 1919, DuPont; in March, 1920, the Standard Color Company; October, 1920, Sandoz Chemical Works; in July, 1921, the Calco Chemical Company; in the same month, July, 1921, the U. S. Color Company; September, 1921, H. A. Metz; in July, 1922, the Ciba Company; March, 1923, the Newport Chemical Company; and March, 1923, John Campbell & Company.

Q. 17. In other words, those that you have just mentioned were offering this chrome blue or black?

A. Yes, and are still offering it.

Then the sulphon acid blue R was first offered by the National Aniline in December, 1917; January, 1921, Campbell; February, 1921, Grasselli; July, 1921, the U. S. Color Co.; November, 1923, DuPont.

Then the sulphon cyanine 5 R; in December, 1917, the National Aniline; June, 1921, DuPont; November, 1921, U. S. Color Company; June, 1923, John Campbell.

Naphtylamine black: July, 1916, National Aniline; February, 1918, the Bayer Company; 1919, Aniline Dyes & Chemical; 1919, DuPont; May, 1919, H. A. Metz; and in July, 1920, The Standard Color Company. That has also been offered us and is made now by The Chemical Company of America, A. Klipstein, Bachmeier & Company, Read Halliday & Company, American Aniline Products Company, Atlantic Dyestuff Corporation, Newport Chemical Works, Grasselli Chemical Company, Jennings & Company, John Campbell, and the Ciba Company.

Those represent, I suppose, 80 per cent. or more of our entire dye consumption; those colors.

Q. 18. Have you prepared statements showing the names of the firms from whom each of the colors

that you use in your business may be obtained and have been obtained by you?

A. I have. That list I read gives it also.

Q. 19. I mean this statement. These are your chrome blue or black, the blue group, the sulphon cyanine group, the diazine black H. group, the brown, and the diazo black?

A. That is right. It is practically the same information.

MR. KRESEL: I am going to offer, if your Honor please, as one exhibit the six statements just identified by the witness. I am afraid they are a little too long to spread upon the record.

THE COURT: The witness has testified to their accuracy?

MR. KRESEL: Yes, your Honor, in substance.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 158." (*See Exhibits, Vol. V, page 2845.*)

Q. 20. Mr. Hobbs, as to the prices at which you have been buying these dyes and chemicals since the outbreak of the war, have you figures there as to that?

A. I have, for a few of the dyes.

Q. 21. Will you take, for instance, as an example the chrome blue-black. I understood you to say that that is a dye that you used most of?

A. That is right.

Q. 22. Will you state what you were paying for that color or dye in 1919?

A. $1.65 a pound.

Q. 23. And what are you paying for it now?

A. 52 to 65 cents. We had offers from nine companies about a month ago for that dye running from 52 to 67 cents.

Q. 24. From nine separate concerns?

A. From nine separate concerns, all American manufacturers.

Q. 25. The next color, in the volume that you consume of that, I understood you to say was sulphon acid blue?

A. That is right.

Q. 26. Give us the figures on that?

A. 1919 we were quoted by the National $2.15.

Q. 27. A pound?

A. A pound. Today we are offered that and are buying it at 70 cents per pound.

Q. 28. From how many different concerns can you buy that?

A. Oh, I think there are eight or ten; quite a large number.

Q. 29. Let me see the statement you have prepared as to prices?

A. (Hands counsel papers.)

Mr. Kresel: I am going to offer this statement.

Q. 30. That gives the dates, the names of the firms, and the quotation, listed under each of these colors. Is that right, Mr. Hobbs?

A. That is right.

Q. 31. And is that correct?

A. That is correct. Those are taken from our office records.

Mr. Anderson: Are you going to offer just the two?

Mr. Kresel: I am going to offer the two principal dyes that he has.

Q. 32. Have you prepared any figures on the other dyes, similar to these?

A. I have one on the sulphon cyanine 5 R A and the diazo black. They run there from 1919, $2.25, to 70 cents today, and on the diazo black from $2.25 to 65 cents, the quotation today.

Q. 33. All these quotations that you speak of are quotations quoted by American manufacturers and prices that you paid to American manufacturers?

A. They are, absolutely.

MR. KRESEL: I offer in evidence the statement with reference to sulphon cyanine 5 R A.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 160." (*See Exhibits, Vol. V, page 2850.*)

MR. KRESEL: Sulphon acid blue.

Received in evidence and marked "Defendant's Exhibit No. 161." (*See Exhibits, Vol. V, page 2851.*)

MR. KRESEL: Chrome blue black.

Received in evidence and marked "Defendant's Exhibit No. 162." (*See Exhibits, Vol. V, page 2852.*)

MR. KRESEL: Diazo black.

THE COURT: They are admitted.

Received in evidence and marked "Defendant's Exhibit No. 163." (*See Exhibits, Vol. V, page 2853.*)

MR. ANDERSON: I understand, of course, if your Honor please, that all this evidence is being taken to these general objections and the rule applied. My reason for suggesting it at this time is that it occurs to me unless it appears that some of these colors are made under patents transferred to The Chemical Foundation, I do not see that they are material to this case and, while I understand that objection is reserved, I felt it probably best to suggest to counsel that I would raise that point.

MR. KRESEL: Of course, I have no objection to your reserving your objection, Colonel; but I must take issue with you upon the proposition that only if these colors are covered by The Chemical

Foundation patents is the testimony relevant. It is relevant upon your charge of monopoly and conspiracy, likewise. That is all from Mr. Hobbs.

I offer in evidence the first statement produced by the witness and identified by him, consisting of four sheets.

Received in evidence and marked "Defendant's Exhibit No. 159." (*See Exhibits, Vol. V, page 2848.*)

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 34. Mr. Hobbs, do you know whether any of the colors referred to in the list just filed as Exhibit No. 159, as used by you, are patented dyes?

A. I do not.

XQ. 35. You do not know?

A. No, sir.

XQ. 36. What is the meaning of "Schultz No. 181" and the Schultz numbers?

A. It is a regular standard list published by the Government at the time of the war, where all dyes were given a certain standard, as the Schultz Standard, with an identification number.

XQ. 37. Mr. Hobbs, have you data from which you could tell me the prices of the same dyes or colors in 1913 and 1914, the prices of which you have listed for 1919 and years subsequent thereto in the statements which you have filed?

A. I think I can get that all right from our records.

XQ. 38. You can get it from your records?

A. Yes, sir.

XQ. 39. The same ones?

A. Practically the same colors.

XQ. 40. They were practically all imported at that time?

A. Almost entirely, yes.

XQ. 41. Would you be kind enough upon your return to make out a statement corresponding exactly, or as nearly as can be——

A. I will do so.

XQ. 42. And if there is any variation explain the same?

A. I will do so.

XQ. 43. Showing the prices of these same colors for 1913 and 1914, as to which you have listed here the prices for 1919 and subsequent years, and send down to Mr. Kresel two copies, that he may give me one.

A. I will do that.

MR. ANDERSON: I would now like to reserve the right to introduce that statement in evidence in connection with the statements here introduced, when it is received.

XQ. 44. Mr. Hobbs, are these dye colors received in packages, are they in barrels, or how are they shipped to you?

A. Mostly in barrels; some in packages. Small quantities in packages.

XQ. 45. Do those packages bear any labels showing whether they are made under patents or under licenses, or things of that kind?

A. I cannot answer that.

XQ. 46. Would you be kind enough to look that matter up on your return and, if they do, send me copies of those labels?

A. I will.

XQ. 47. Showing just how they are made? You spoke of being a member of the committee appointed by the War Trade Board to advise as to the importation of dyes immediately after the war. Were they what were commonly called reparation dyes that were imported at that time?

A. All dyes.

XQ. 48. You had to cover all dyes?

A. For reparation or any other purpose.

XQ. 49. You were advised that was the importation of reparation dyes?

A. All dyes.

XQ. 50. And the reparation dyes were imported through the Textile Alliance, were they not?

A. Under our recommendation, yes.

XQ. 51. Yes, and your limitations?

A. It was on the recommendation of our committee the Textile Alliance was engaged to do it.

XQ. 52. Who selected the Textile Alliance as the importing agent; the War Trade Board, do you recall?

A. The War Trade Board.

XQ. 53. They afterward acted with the State Department?

A. Well, we were transferred, my recollection is, along the latter part of June—the War Trade Board went out of existence and our committee was transferred to the State Department and then it was in the fall, I should say September, 1919——

XQ. 54. You were speaking of June, 1919?

A. I was speaking of June, 1919. May, 1919, this Dye Advisory Committee was appointed by the War Trade Board. Then, my recollection is, before the first of July, of that same year, the committee was transferred to the State Department and then it was in the 1919, September or October, I think it was, the Textile Alliance began to act as the importing agent.

XQ. 55. You advised as to the distribution of the dyes and the needs of this country, did you?

A. The issuance of licenses.

XQ. 56. In order to abbreviate it. I find that you testified—I believe before the Shortridge Committee?

A. I did.

XQ. 57. The so-called Shortridge Committee, on Resolution 77. And in stating what you did there you made this statement at page 906. Would you care to see it? I will read it to you aloud and ask you if that was correct:

> "Acting under these general instructions we very shortly afterwards laid down a general plan on which these imports were to be handled. We recognized the necessity as to some colors for importations, and, in general, wherever there was a reasonable quantity in this country, made by American dye manufacturers, at a reasonable price and of proper quality, no licenses should be issued; but where these qualifications did not exist, that licenses should be issued.
>
> "At first we passed personally, I mean as a committee, on every application that came in to us. But after time went on that matter became a routine detail under the general policy laid down, and those matters were passed upon by the force of the War Trade Board, and afterwards the State Department, and now the Treasury Department. But that general policy has been carried out."

That is your understanding of the situation?

A. That is as I recollect my statement, yes.

MR. MAHAFFY: What page were you reading from?

MR. ANDERSON: Page 906, I think it was, Mr. Mahaffy.

THE WITNESS: That is before the Shortridge Committee.

MR. ANDERSON: Yes, it is very short testimony.

XQ. 58. You will get me the information that I requested?

A. The prices of 1913 and 1914 and whether or not the patent labels are on any of the packages, yes.

XQ. 59. Yes, and indicating whether they are manufactured under license or patents?

A. I will do so.

(Witness excused.)

(A short recess was taken at this point by direction of the Court.)

FRANK D. CHENEY.

FRANK D. CHENEY, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 1. Where do you reside, Mr. Cheney?

A. South Manchester, Connecticut.

Q. 2. What is your business?

A. I am the manager of the dyeing and finishing departments of the silk manufacturing establishment of Cheney Brothers, who manufacture decorative goods, upholsteries, dress-goods, velvets, plushes, cravats, socks, yarns and other miscellaneous items which need not be mentioned.

Q. 3. All silk products are they?

A. Not entirely silk.

Q. 4. Principally silk?

A. Principally silk. There are a few products which contain no silk; there are some products which contain either warp or filling of cotton or wool or linen, but there is also silk in them.

Q. 5. Please tell us something as to the extent of your business in volume, or turn over?

A. Well, we manufactured about 3,900,000 yards of broad goods; that is, dress goods, upholsteries and decorative goods, during the past year; about 4,600,000 yards of velvets; cravats, 166,000 dozen; a small

amount of ribbons, 28,000 yards; and unfortunately I cannot give you the pounds of yarns, but quite considerable.

Q. 6. Where are your plants located?

A. There is only one plant, which is located in South Manchester, Connecticut.

Q. 7. About how many people do you employ?

A. The highest number of people we have employed is about 4,900. We are now employing about 4,200.

Q. 8. In your business do you use dyes?

A. To a very large extent.

Q. 9. On an average, how much of dyes do you use per year?

A. It would average over 100,000—I have not the exact average for five years, but it would be better than 110,000 to 112,000 pounds per year. I can give it to you by years.

Q. 10. Before we get to that, prior to the outbreak of the European war in 1914, from what sources did you get your dyes?

A. Practically entirely from Germany. There were a very few, two or three dyes, which were made in this country, and I believe they were not completely made, they were made from imported intermediates.

Q. 11. Can you state from statements that you have prepared and have with you, before I introduce those statements, the relative percentage of dyes from German sources that you used in 1913, and the percentage of American-made dyes?

A. In 1913 we used 116,765 pounds of German dyes, which was 91.9 per cent. of our total, and 10,270 pounds of American dyes, which was 8.1 per cent. of our total. I see that on this copy the period is in the wrong place.

Q. 12. Yes, I have changed that, and in the copy I will introduce that change has been made. Contrast

that, if you will, with 1922, and tell us how much of your total dyes you had from German sources and how much from American sources?

A. In 1922 the situation is almost exactly reversed. We purchased 12,000, or we consumed 12,020 pounds of German dyes, which was 10.4 per cent. of our entire production——

Q. 13. Entire consumption?

A. Entire consumption—and 97,650 pounds of American dyes, which was 84.2 per cent. of our consumption.

Q. 14. I will return to this subject in a minute, but now I should like to inquire as to the situation that you found upon the outbreak of the war, as to the supply of dyes for your business. What was the situation?

A. The situation was extremely difficult and harrassing to the manager of any plant consuming dyes. We were dependent upon the stocks which existed in this country and such small amounts as were imported after the outbreak of the war. The situation was taken advantage of by people who were anxious to make quick profit, speculation was very feverish, prices mounted.

Q. 15. Tell us something about the prices. Can you give us any example?

A. Well before the war, before 1914, our average price was 67 cents per pound.

Q. 16. Of dye?

A. Per pound of dye. About a year and a half later our average price was in the neighborhood of seven dollars per pound. There is the famous case of Rhodamine B Extra Concentrated, which we purchased before the war for 92 cents. In fact, we purchased as low as 63 cents, a special importation of our own, and the price of that dye before it began to go down again went as high as $80 per pound. The package which we imported at 63 cents cost us seventeen

hundred odd dollars. We could have sold it at one time for forty-five thousand odd dollars. That is the exceptional case. Other dyes mounted very high, but not so high as that particular one.

Q. 17. Mr. Cheney, have you prepared a statement showing your total consumption of dyes for the five years beginning 1918, and the distribution of that total consumption as to the sources from which it was obtained?

A. I have.

Q. 18. Will you produce that statement?

A. Would you like me to read it?

Q. 19. No, I am going to offer that in evidence.

A. (Witness hands counsel.)

MR. KRESEL: Perhaps, your Honor—this is not very long—that may go in as part of this witness's testimony. To summarize it, your Honor, this gives the period 1918 to 1922. It shows that the consumption of dyes by this gentleman's business ran from 109,000 pounds in 1921 to as high as 139,000 pounds in 1919, and, as he has already pointed out, in 1913, 91.9 per cent. of the entire consumption came from German sources and only 8.1 per cent. came from American sources, while in 1922 10.4 per cent. of his total consumption came from German sources and 84.2 per cent. came from American sources. That is to go in as part of the witness's testimony.

The same is spread upon the record as follows:

REPORT OF CONSUMPTION OF DYESTUFFS FOR THE YEAR 1922.

	Total Consumption
Period of one year from Jan. 1918 to Jan. 1919	113,623 lbs.
" " " " " " 1919 " " 1920	139,938 lbs.
" " " " " " 1920 " " 1921	118,646 lbs.
" " " " " " 1921 " " 1922	109,930 lbs.
" " " " " " 1922 " " 1923	115,970 lbs.

Distribution of Consumption

Year	German Lbs.	German %	Swiss Lbs.	Swiss %	English Lbs.	English %	American Lbs.	American %
1913	116,765	91.9					10,270	8.1
1919	25,241	18.0	5,240	3.8	298	0.2	109,159	78.0
1920	7,423	6.25	6,322	5.3	180	0.15	104,721	88.3
1921	13,354	12.2	6,183	5.6	918	0.8	89,475	81.4
1922	12,020	10.4	6,146	5.3	154	0.1	97,650	84.2

Q. 20. Mr. Cheney, have you also prepared a statement of the purchases of dye stuffs made for your business for 1913, and then from 1916 on to the end of 1922?

A. I have.

Q. 21. Showing the average cost of dyes per pound?

A. Yes.

Q. 22. And then have you analyzed those costs, distributing the dyes as to the origin thereof, German, Swiss, English and American?

A. I have.

Q. 23. Now, to take a bird's eye view of this statement in 1913, what was the average cost per pound?

A. 67 cents per pound.

Q. 24. What was it in 1916?

A. $4.45.

Q. 25. What was it in 1922?

A. $1.47.

Q. 26. So it has gone down from $4.45 in 1916 to $1.47 in 1922?

A. Yes.

Q. 27. Now, looking at the dye stuffs of German origin, what was the average cost per pound in 1919?

A. Dyes of German origin?

Q. 28. Dyes of German origin?

A. $3.93 per pound.

Q. 29. And what was it in 1922?

A. $4.20 per pound.

Q. 30. Now, looking at the American dyestuffs, of American origin, the average cost in 1919 was how much?

A. $2.17 per pound.

Q. 31. What was it in 1922?

A. $1.09 per pound.

MR. KRESEL: I now offer in evidence, as part of this witness's testimony, this statement.

THE COURT: It will be spread on record as if testified to in detail by the witness.

MR. KRESEL: Yes, your Honor. The statement is as follows:

REPORT OF PURCHASE OF DYESTUFFS FOR THE YEAR 1922.

Average Cost.

	1913	1916	1918	1919	1920	1921	1922
Dollars per lb.	0.67	4.45	2.61	2.43	2.31	2.06	1.47

Analysis of Cost.

1. Dyestuffs of German Origin

Year	1919	1920	1921	1922
Amt. purchased—lbs.	341⅝	8,934½	15,417	9,716
Total Cost	1,342.88	37,555.64	81,052.57	40,789.97
Average cost per pound	3.93	4.20	5.26	4.20

2. Dyestuffs of Swiss Origin

Year	1919	1920	1921	1922
Amt. purchased—lbs.	5,824½	7,111	6,175	5,593
Total Cost	44,302.48	41,629.14	23,571.64	19,292.17
Average Cost	7.61	5.85	5.26	3.45

3. Dyestuffs of English Origin

Year	1919	1920	1921	1922
Amt. purchased—lbs.	398	770	768	154
Total Cost	882.20	1,640.50	1,909.67	306.47
Average Cost	2.22	2.13	2.49	1.99

4. Dyestuffs of American Origin

Year	1919	1920	1921	1922
Amt. purchased—lbs.	114,493⅝	115,117½	78,976	99,128
Total Cost	248,026.79	223,529.81	102,118.38	108,16.14
Average Cost	2.17	1.94	1.29	1.09

5. Grand Total

Year	1919	1920	1921	1922
Amt. purchased—lbs.	121,047¾	131,993	101,336	114,591
Total Cost	294,554.35	304,359.02	208,652.26	168,557.69
Average Cost	2.43	2.31	2.06	1.47

Q. 34. Have you also a statement of the names of the American firms from whom you are now purchasing dyes?

A. I have.

MR. KRESEL: Your Honor, may that likewise go in as part of the witness's testimony? You have that, have you not, Colonel?

MR. ANDERSON: What is that?

MR. KRESEL: It is the last sheet.

THE COURT: When the witness has testified as to its correctness.

Q. 35. This is a correct statement, is it not?

A. Yes.

MR. KRESEL: I will read that in, your Honor. There are a few names. They are the Du Pont, Newport, Mich., Grasselli, National Aniline, Calco Chemical, Peerless Color Co. (formerly Sterling), Atlantic Dyestuff (Portsmouth, N. H.), Chemical Co. of America (N. J.), Garfield Aniline Works (Garfield, N. J.), Essex Chemical.

THE WITNESS: I would say that these are the concerns from which we are purchasing regularly. There might be others that we might occasionally buy an odd lot from, but these are our regular ones.

Q. 36. Are there other manufacturers of dyes who submit quotations to you?

A. Yes.

Q. 36a. You may not buy from them, but they try to sell?

A. Yes.

Q. 37. Were you a member of this Advisory Dyes Committee of the War Trade Board?

A. I was.

Q. 38. Representing the silk interests?

A. Yes.

Q. 39. I meant to ask you—you appeared before one of these Congressional Committees, did not you, and testified there?

A. I appeared before both the Ways and Means Committee and the Senate Finance Committee.

Q. 40. I notice in your testimony before the Ways and Means Committee, a statement made by you on March 20, 1919, that your concern, in conjunction with a number of other representative textile industries addressed a cablegram to President Wilson at Paris with reference to the dye industry; did you?

A. We did.

Q. 41. And is the copy of the telegram there set forth as a part of your testimony, a copy of the telegram, and is that correct?

A. Yes, it is.

MR. KRESEL: May I read that in the record, your Honor, instead of offering it?

THE COURT: Yes.

MR. KRESEL: Follow me, please, Mr. Cheney. The telegram reads as follows:

"The undersigned, representing various branches of the textile industry, respectfully submit that in their opinion an independent and self-sustaining American Dye manufacturing industry is a national necessity, but such a dye industry cannot be established unless competition from German factories, including those in occupied territory, be cut off for a period of years; that no tariff will furnish protection against the enormous resources and unscrupulous methods of the German trust, fighting to regain its foreign markets; and that only a licensing plan like the Brit-

ish, excluding all foreign dyes reasonably obtainable in the United Seates, will save the new American industry. We respectfully urge that immediate steps be taken to procure, both in the Peace Treaty and in legislation, the measures necessary to establish such a plan. We advocate this not merely because a domestic dye industry is essential to the independence of the American Textile industry and manufacture generally, but chiefly because we believe that only through an established dye industry can the nation secure the progress in chemical education in the application of chemistry for the arts and the above, and in curative medicine, which are indispensable to the national welfare."

Q. 42. You signed such a cablegram to President Wilson?

A. We did.

Q. 43. And it was sent to him?

A. Yes.

Q. 44. And that is correct?

A. Yes.

MR. ANDERSON: What page is that?

MR. KRESEL: Page 47.

THE COURT: What is the date of the telegram?

MR. KRESEL: March 20, 1919. Now, your Honor, at this time, I desire to offer in evidence an extract from President Wilson's message to Congress, delivered on May 20, 1919.

MR. ANDERSON: Why not put the whole thing in evidence?

MR. KRESEL: I will do that, but I will only read this portion. It follows within two months of this cablegram. I will put the whole message in. It is not very long, but I will read only the portion that has reference to the dye industry. The President says this:

"Nevertheless, there are parts of our tariff system which need prompt attention. The experiences of the war have made it plain that in some cases too great reliance on foreign supply is dangerous, and that in determining certain parts of our tariff policy domestic considerations must be borne in mind which are political as well as economic. Among the industries to which special consideration should be given is that of the manufacture of dyestuffs and related chemicals. Our complete dependence upon German supplies before the war made the interruption of trade a cause of exceptional economic disturbance. The close relation between the manufacturer of dyestuffs, on the one hand, and of explosives and poisonous gas on the other, moreover, has given the industry an exceptional significance and value. Although the United States will gladly and unhesitatingly join in the program of international disarmament, it will, nevertheless, be a policy of obvious prudence to make certain of the successful maintenance of many strong and well-equipped chemical plants. The German chemical industry, with which we will be brought into competition, was and may well be again, a thoroughly-knit monopoly capable of exercising a competition of peculiarly insidious and dangerous kind." Please mark that.

Received in evidence and marked "Defendant's Exhibit No. 164." (*See Exhibits, Vol. V, page 2854.*)

MR. KRESEL: I offer in evidence, also, the President's message to Congress of December 2, 1919, without re-reading the portion that I have just read. I direct your Honor's attention to the fact that the President again calls the attention of Congress to this subject of dye industry, and quotes in this message of December 2, 1919, the paragraph that I have just read from his message of May, 1919.

Received in evidence and marked "Defendant's Exhibit No. 165." (*See Exhibits, Vol. V, page 2866.*)

MR. ANDERSON: I understand, if your Honor please, that the Court takes judicial notice of the messages of the President, and I shall not object to the introduction of these messages into evidence in this case, for convenience, asking at this time that I may reserve the right to introduce other messages of the President as may seem appropriate. I have taken the view that they would be referred to, and judicial notice taken, and I would like to put all in.

MR. KRESEL: That is all of this witness.

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 45. Mr. Cheney, the Committee on Ways and Means and the Finance Committee, before which you testified, were considering a bill providing for a licensing system or an embargo in the alternative mentioned in your telegram to the President, were they not?

A. There was such a system under consideration at one time. I cannot state offhand whether it was at the time of my telegram or not.

XQ. 46. I mean at the time that you appeared before those committees?

A. Oh, yes, at the time I appeared before the committees.

Q. 47. You put that telegram in. The Committee had under consideration a bill for a licensing system or a dye embargo?

A. Yes.

XQ. 48. The bill has been read in here. I merely want to connect it up.

A. That is correct.

XQ. 49. You appeared both before the House and Senate Committees on that measure, and testified?

A. Yes.

XQ. 50. Can you say whether that dye embargo bill or licensing system was ever passed by the Senate? Do you know?

A. I don't positively know. I believe not.

XQ. 51. Before the Senate Committee on Finance you testified——

MR. KRESEL: Do you know, Colonel, that there were three bills that dealt with the subject? Which one are you now inquiring about?

MR. ANDERSON: The bills that were before the Senate and House Committees providing for an embargo or licensing system. They were never voted upon by the Senate.

MR. KRESEL: My understanding, your Honor, is this. You want to keep it straight on the record, do you not?

MR. ANDERSON: I do, and I want, before we close this case, with the consent of the Court, to definitely ascertain from the record exactly what was done, and by agreement put it in the record.

MR. KRESEL: I will co-operate with you. But, subject to correction, may I make this statement? My understanding of it is this: That first, by joint resolution of Congress, an embargo was established. I think it was for a period of three months. Secondly, what is known as the Temporary Tariff Bill was passed, and as a portion of that Temporary Tariff Bill the period of the embargo was extended for another period of either three or six months. Subsequently, by resolution, there was a third extension which carried it to the time when the final Tariff Bill was enacted. In that Tariff Bill there was no embargo provided for, but there was a very high tariff put on.

That is my understanding of the situation, all of which is subject to correction, and we will put in the record.

MR. ANDERSON: I will not discuss it, as we are going to put in the actual record of facts. My understanding is not entirely in accord with yours in detail; but I do not think it is at sufficient variance at this time to make it a subject of discussion, and we will put in the actual facts agreed upon.

MR. KRESEL: Very well; we will do that.

XQ. 52. In your testimony before the Senate Finance Committee on H. R. 8078, which has been so described here a number of times,——

MR. KRESEL: Which is that—the Shortridge or the Senate?

MR. ANDERSON: Page 485.

MR. KRESEL: That is the Senate Committee.

MR. ANDERSON: If you have a copy, will you give it to the witness?

THE WITNESS: I have a copy.

XQ. 53. You had formerly testified before that committee at an early stage in the hearing, I believe?

A. Before the Finance Committee?

XQ. 54. Yes; at page 147 of the same book.

A. Page 147; yes.

XQ. 55. You had filed a written statement and had made an oral statement before the committee, and then you came back before the committee, and your statement appears on page 485. In that statement, at page 485, you made the following statement—I do not think it is testimony:

"In order to correct an unintentional injustice which I did yesterday to the War Trade Board, in not stating their policy with sufficient clearness, I desire to read this statement:

When the application of a consumer for the

importation of a color is refused on the grounds of ample domestic production, he is advised that his application has been refused for that reason. Should the consumer request the War Trade Board Section to advise him of the source of such supply the War Trade Board Section refers him to the American Dye Institute. The War Trade Board itself has not undertaken to notify the consumer of the name of all producers. Accordingly, an unnamed manufacturer would have been furnished an opportunity to make just criticism on the part of a governmental agency. It was felt that this responsibility should be assumed by the only organization of manufacturers, namely, the American Dyes Institute, which represents practically all of the manufacturers. The American Dyes Institute agreed to furnish the names of all manufacturers of a particular dye in such a case to the consumer and in this connection agreed to give the names, not only of its own members but of all other manufacturers who might not be members. The American Dyes Institute agreed to do this only upon condition that in letter refusing the application the consumer should be referred to the American Dyes Institute only when after receipt of the letter of refusal he applies to the War Trade Board Section for information."

You read that statement to the committee, did you not?

A. I did.

XQ. 56. Was that a statement prepared by you, Mr. Cheney, or by whom?

A. Prepared by me, as I recollect it.

XQ. 57. Did that state correctly the procedure followed on advice of your Advisory Committee with respect to the importation of dyes?

A. I believe so.

XQ. 58. You spoke of buying in 1913, 10,270 pounds of American dyes. Who manufactured dyes in the United States in 1913?

A. The National Aniline, which was then, if my recollection is correct, Schoellkopf, Harford & Hanna, manufactured direct black. I think the bulk of that 10,000 pounds was direct black. I believe that one or two others manufactured acid orange, the cheapest dye, which then sold at eleven cents per pound and which it did not pay for the Germans to transport on account of its low price.

XQ. 59. In the statement which has been filed by counsel, prepared by you, in the second sheet of the three statements referred to, you have given the prices of various dyes for the years 1913 to 1922 and the amounts purchased, in pounds, from various countries. What is the source of your information on that subject, Mr. Cheney?

A. It is taken from our records.

XQ. 60. These, then, are only your purchases; these are not the total purchases of the country; they are only your purchases?

A. No, this is Cheney Brothers' purchase.

XQ. 61. That is a matter of your purchases?

A. Yes.

XQ. 62. And the prices paid by you for those various dyes?

A. Yes.

XQ. 63. Taking up, first, the German dyestuffs purchased in 1919 to 1922, what generally were the types of dyes which you purchased from Germany?

A. In 1919 I think we purchased—you see, it was only 341 pounds. It was probably one package or two packages of some vat dye. I assume it was of vat dye. I could not give you that information exactly. I can get it for you, if you wish it.

XQ. 64. Go ahead to 1920?

A. 1920, vat dyes, a few basic dyes and direct dyes.

XQ. 65. My ignorance on the subject is very

great. Would you mind telling me, are those the special colors not made in the United States altogether?

A. Yes.

XQ. 66. They are, as a rule, newly developed and high priced colors, are they not?

A. Some of them were not high priced.

XQ. 67. They have not been developed in this country?

A. No.

XQ. 68. And could you name some of the dyes in 1920, 1921 and 1922, aggregating as high as 15,000 pounds in 1922, some specialties that you brought in from Germany?

A. I can give it to you for 1922, I haven't the other years.

XQ. 69. Would they be, do you think, approximately the same colors in 1921?

A. There would be a little variation one way or another, but they would be the same groups.

XQ. 70. No material variation?

A. No, but they would be the same groups.

XQ. 71. Suppose you give me the type of dyes imported from Germany in 1922, if you have that information, with the prices?

A. With prices?

XQ. 71. (Continued.) Yes.

A. I haven't that here. I can get that for you.

XQ. 72. Give me the character, and we will call for the prices later?

A. There were five acid dyes: Cyanole Extra, Acid Blue 00; Brilliant Acid Blue V; Silk Blue BT5B00 Rose Induline 2B.

We can now procure three of those dyes in this country, so that we are today only in need of two acid German-made dyes, Cyanole Extra and Silk Blue BT5B00.

XQ. 73. Are those dyes of a special character and high priced, speaking generally?

A. They have special qualities. They are higher than the average price.

XQ. 74. They are higher than the average price?

A. Yes.

XQ. 75. And generally, blues are low-priced dyes, are they not?

A. What?

XQ. 76. Blue colors are low-priced dyes and in common use, are they not?

A. I should think it depended on the kind of blue.

XQ. 77. Then the price which you have given in 1922 and 1921 on imported dyes includes the duty, does it not?

A. Yes.

XQ. 78. That is the American selling price plus cost of transportation and duty?

A. Yes.

XQ. 79. Are any of those dyes, so far as you know, sold under or covered by the German patents owned by The Chemical Foundation?

A. I do not know.

XQ. 80. The duty now imposed on dyes imported of this type is 60 per cent on the American price, is it not, the American valuation; or do you not know?

A. I do not know.

XQ. 81. You do not know what the duty was or the valuation on which it was based in 1919 or 1913, do you?

A. I can not give you that from memory, no.

XQ. 82. Take up the dyestuffs of Swiss origin. I see you are quite an importer of dyestuffs from Switzerland. What are the types of dyes that you import from Switzerland?

A. Well, the same kind of dyes as we imported

formerly from Germany, the more refined, higher types.

XQ. 83. The dyestuffs of English origin; would you say the same as to those, although the amount is small?

A. The amounts are small there. That consisted principally of a few vat dyes, I believe.

XQ. 84. Take the dyestuffs of American origin. They now include all of the dyes made by American manufacturers and used in your business, including the cheaper form of dyes, do they not?

A. Yes, and the expensive forms as well.

XQ. 85. Is not the great bulk of the dyes used in your business of a cheaper price of dyes?

A. No, they are not.

XQ. 86. I believe you have given a list of the dyes used in your business; have you not?

A. I have not. I can furnish it if you wish it.

XQ. 87. I should like very much to have it, Mr. Cheney, if it would not trouble you too much.

A. None.

XQ. 88. In that connection could you tell me whether any of these dyes shipped to you by various American manufacturers bore any labels showing whether they are made under patents or patented processes or under license?

A. I cannot tell you.

XQ. 89. Would you look that up and if any such labels exist would you kindly send me samples of each?

A. I will.

XQ. 90. There is another question I would like to ask you, and that is what were the 1913 prices on the colors which you state you imported from Germany in 1919 and the three succeeding years. Could you state the 1913 prices on those colors? You have stated the average 1913 price per pound for all dyes, but I would like to have the comparison, if I could,

on the colors which you used. You see what I mean.

A. It would take quite a little research to dig it up.

XQ. 91. I do not want to put you to any unnecessary trouble, and if it is too much trouble I will not ask it. A statement was filed by Mr. Thompson, and I think possibly Mr. Hobbs, for 1919 and subsequent years by colors. I asked them to give it to me for 1913 and 1914 by colors.

A. We used 132 colors in 1913. That is ten years ago. I would be very glad to see if we could get it for you. I cannot even tell you offhand whether those records are still in existence.

XQ. 92. I will ask you this: If you can give it to me very readily, on especially the colors now imported from Germany, those that were imported in 1921 and any of the other principal colors—if you can give me that information without much trouble, I will be greatly obliged if you will send it to me. If it should occasion you any trouble, I will not ask it.

A. The list of colors now imported from Germany, with 1913 prices?

XQ. 93. That is right; imported from Germany in 1921, with 1913 prices. In the second place, if you could take some of your chief colors used by you, even though bought in America, and give me the 1913-1914 prices, it would be sufficient. I do not ask you to go into a long detail and I do not ask you to go into any great deal of trouble. Just give me what information you can conveniently make up along that line.

A. The chief colors?

XQ. 94. That is, what I would call a fair average representation, high priced colors and low priced colors. You see what I mean?

A. With both 1913 and 1922 prices?

XQ. 95. 1913 and 1922 prices, yes. I would ask

you also to take your statement, Sheet No. 2, and take the average cost per pound. How did you arrive at the average cost per pound; did you take the total number of pounds of all dyes used in that classification or did you take the colors coming in and average them?

A. We took the total consumption. I say consumption; I see that that particular page is headed "Purchases." We averaged the total purchases.

XQ. 96. You took the total purchases and the cost of the total purchases and divided the cost by the number of pounds?

A. That is my understanding. That can very easily be verified, because that same memorandum gives you the total pounds and the total dollars and the average.

XQ. 97. On the third page of your memorandum you give a list of the houses you are now purchasing from. You have been purchasing from those houses for several years as they produced the colors you needed, have you not?

A. Yes.

XQ. 98. Where is your plant located?

A. South Manchester, Connecticut.

XQ. 99. You purchased from the duPont plant at Wilmington, Delaware, did you not?

A. Yes.

XQ. 100. And they shipped to your plant in Connecticut?

A. Yes.

XQ. 101. I note you say here "Newport" and afterward in parenthesis "Michigan". Is that the Michigan plant of the Newport Chemical Company?

A. Yes.

XQ. 102. You purchased from that plant and they shipped to you at your plant in Connecticut direct?

A. Yes.

XQ. 103. The Grasselli plant, I believe it was testified, was in New Jersey.

MR. KRESEL: He did not testify to that.

MR. ANDERSON: I believe it was testified that it was in New Jersey.

A. I think that the Grasselli plant is at Rensselaer on the Hudson.

XQ. 104. That is in New York?

A. In New York. I am not positive as to that.

XQ. 105. That is not in Connecticut, in any event, is it?

A. No.

XQ. 106. And they ship from their plant outside of Connecticut, to you at your Connecticut plant, do they?

A. Yes.

XQ. 107. The National Aniline plant from which you buy is where?

A. In Buffalo.

XQ. 108. The same applies in that case, they ship direct to your plant, do they?

A. They have a distributing house in New York.

XQ. 109. But they either ship from New York or from Buffalo?

A. And they have a distributing house in Hartford, quite near our plant. We might get shipments from either one of the two distributing houses or from the factory.

XQ. 110. A considerable portion of your stuff comes from the factory or the New York distributing house, does it not? You do receive from both of those?

A. We receive from all three sources.

XQ. 111. Where do you get your stuff from the Calco Chemical Company; where is it shipped from?

MR. KRESEL: Colonel Anderson, if it is proposed by these questions to show that this is

interstate commerce, there will be no dispute on our part.

MR. ANDERSON: Your disputing it does not relieve me of the necessity of proving it. I do not want to go into any unnecessary proof of it. Will you admit that the licensees of the Chemical Foundation are engaged in interstate commerce in the manufacture of dyestuffs and pharmaceuticals?

MR. KRESEL: This is not one of the licensees.

MR. ANDERSON: You say that would cover the necessity of taking all this testimony. As a matter of fact, every one of them are shipping across state lines.

MR. KRESEL: It certainly is true that a great many of them are engaged in interstate commerce. I do not want to say that all of them are, because I really do not know. But that there are a great many of them engaged in interstate commerce there is no question, and we will concede it.

MR. ANDERSON: As to the materials covered by the licenses issued by The Chemical Foundation?

MR. KRESEL: You mean that they are engaged in interstate commerce in connection with that part of their business?

MR. ANDERSON: In the business covered by The Chemical Foundation licenses.

MR. KRESEL: Yes, that is a fact. We admit that.

MR. ANDERSON: If you admit that, that will save the necessity of putting in any further proof on that.

MR. KRESEL: I think that is a fact, yes.

MR. ANDERSON: I do not think I wish to ask Mr. Cheney any further questions.

You will give me the information I ask, Mr. Cheney?

THE WITNESS: Yes, sir.

MR. ANDERSON: And I would like to reserve the right to use it on its arrival.

MR. KRESEL: I will not call Mr. Imbrie. That is the last of this line of witnesses.

(Witnes excused.)

ANDREW C. IMBRIE.

ANDREW C. IMBRIE was called as a witness in behalf of the defendant, and being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 1. Mr. Imbrie, will you state your residence and your occupation?

A. I live in New York City and I am the treasurer of the United States Finishing Company, whose office is at 320 Broadway, New York.

Q. 2. Is that the company of which Mr. Thompson is president?

A. Yes.

Q. 3. A witness who preceded you on the witness stand?

A. Yes.

Q. 4. I want to inquire, Mr. Imbrie, about only one fact from you, and that is, whether in 1916 you had a conversation with President Wilson upon this same subject that Mr. Thompson testified about this morning?

A. Yes.

Q. 5. I will come to the conversation. I just want to identify the time, place and subject. When did you have this conversation?

A. On March 8, 1916.

Q. 6. Were you personally acquainted with the President?

A. I had known the President since I was a student at Princeton and I was in his courses.

Q. 7. In the course of that conversation did you deliver to the President a memorandum as to the subject of the conversation that you had with him?

A. Yes.

Q. 8. I show you this memorandum and ask you whether that is a correct copy of the memorandum that you left with the President?

A. Yes.

Q. 9. Did you also leave with him a letter of which I show you a copy?

A. Yes.

Q. 10. I notice that that letter is dated March 6, 1916. Will you explain the difference in date?

A. I prepared this memorandum before going to Washington to meet the President. I had made an appointment with him to see him on the 8th of March. This memorandum was prepared after I had a talk with Mr. Thompson, covering his own interview with the President. We felt that it was important that the points that Mr. Thompson had mentioned should be emphasized, and we wanted to be very sure that the President not only had those views emphasized, but that the substantial features of the matter were set forth in a memorandum that we could leave with him. So before leaving for Washington I wrote a letter to the President which I intended to leave with him and did leave with him, accompanying the memorandum, when I saw him two days later, on the eighth, I think.

Q. 11. The date of the letter is the date when you left New York?

A. Yes, and two days later I left the letter with him personally.

Q. 12. With the memorandum and the letter did you also leave with the President a copy of the letter of which I now show you a copy, signed H. L. Scott, Secretary of War ad interim?

A. Yes.

Q. 13. Before introducing these documents, I am going to ask you to state your best recollection of the conversation that you had with the President, stating what you said and what he said.

A. Do you wish me to read the memorandum that I left with him?

Q. 14. No. If you desire to use that to refresh your recollection, you may do so; but you may not read it.

A. Well, I stated to the President the necessity of the dyestuff business to the textile and other manufacturers in the country. I emphasized the fact that at that time and prior to the war probably 90 per cent. of all of the dyes that were used in this country were imported from Germany; but that since early in 1915 we had received no color from Germany. We understood that their factories were manufacturing explosives and not colors. At any rate, they were not coming in, and that practically we were faced with a color famine. I said that there were a number of German dyes in the hands of speculators in this country that were being offered at exorbitant prices as long as they lasted, and that something would have to be done in a systematic way to encourage the establishment of a dyestuff industry in this country; so that we would never again be subjected to the difficulties that were then prevailing.

At that time the bill known as the Hill Bill was under consideration in Congress, and we felt that as consumers of dyes we could give our support to that bill, even though it increased the duties on dyes, and presumably would increase for a time the cost of dyes

to us; because we felt that the establishment of an American industry here was of more importance to us than any temporary increase in prices.

I gave him some figures as to the amount of dyes that were imported prior to the war from Germany. It was something like forty or fifty million pounds and they had a value of approximately twelve or thirteen million dollars. I stated that if the Hill Bill was enacted it would probably increase the rates of duty something like 40 per cent. over the existing rates, but that those would probably not add more than five million dollars to the cost of dyes to the consumer.

I pointed out the fact that the yearly value of textiles and other materials in which dyes were used, such as wool, silk, cotton and leather, amounted to nearly two billion dollars. I stated that approximately 85 per cent. of these textiles were dyed and that that represented a business of more than a billion dollars a year. I felt that the amount added to the cost of the dyes by the imposition of the duty provided in the Hill Bill would be very small in proportion to the value of the merchandise affected.

I stated finally that in addition to the help given to the users of dyes in textiles, the establishment of a dyestuff industry in this country, being so closely related to the manufacture of munitions, would be an additional security for the country, in view of the fact that a plant equipped to make dyes could be almost over night adapted to the manufacture of munitions and explosives.

The President said that he was familiar with the situation and appreciated the importance of it not only to the textile industry, but to the country at large. He said that in seeking a remedy for the situation, he was not merely interested in helping the dyestuff industry, but he would like to see a remedy applied that would be fundamental and help all indus-

tries. He was rather inclined to an anti-dumping provision rather than to a mere reliance upon a tariff.

I remember calling his attention to the fact that the tariff law which was then in existence attached penalties to under-valuation of goods that were entered at the Custom House and really was in effect an anti-dumping law. The President agreed that that was in a large measure true, but he regarded the present law as not sufficiently far-reaching to accomplish the purposes of a thorough-going anti-dumping law.

I remember asking the President to consider the testimony of Professor Charles Herty, who was then president of the American Chemical Society, at the hearing before the Committee on Ways and Means. That was testimony which I think every one who heard of it felt was a logical presentation of the situation and its remedy.

Q. 15. What was the proceeding at which Professor Herty testified?

A. That was the hearing on the Hill Bill.

Q. 16. Before the House Ways and Means Committee?

A. As I recall it, yes. The President said that it was planned, as I remember it, that the Government would establish plants for making high explosives and I remember calling his attention to the letter which you showed me that had been written by General Scott, who was then Acting Secretary of War, in which he pointed out the fact—it was a letter to Mr. Hill, who had the Hill Bill in charge——

Q. 17. Representative Hill?

A. Yes. The letter that I have a copy of here, which was written February 16, 1916, and which was addressed to the Honorable E. J. Hill, of the House of Representatives.

Q. 18. I shall read it later. You say you called the President's attention to that?

A. I called his special attention to that letter as touching upon the relationship between the dyestuffs and the explosives industry.

Q. 19. And you say you left a copy of it with the President?

A. I left a copy of that letter with the President. It was taken from the Congressional Record of February 23, 1916.

Q. 20. Have you stated substantially to your best recollection your conversation with the President?

A. Yes.

MR. KRESEL: I now offer in evidence the letter signed by Andrew C. Imbrie, dated March 6, 1916, addressed to the President, together with the memorandum mentioned by the witness as having been left by him with the President, and the letter from General Scott which he also left with the President. I suggest that the letter to the President bear the number 166, the memorandum 166-a and General Scott's letter 166-b.

THE COURT: Admitted.

Received in evidence and marked respectively, "Defendant's Exhibits Nos. 166, 166-A and 166-B." (*See Exhibits, Vol. V, pages 2882, 2884.*)

MR. KRESEL: I read the letter addressed to the President, which is as follows: (Reading)

The memorandum is as follows: (Reading)

Q. 21. Mr. Imbrie, I am going to stop reading at this point to inquire what the fact was as to the prices of dyes at this time. You speak here of prices being ten to fifty times their normal value. What is the fact about it and can you give us any examples?

A. I can remember one instance where a color that was important for us that was known as Rhodamine 6 G concentrated——

Q. 22. When you say "for us," what do you mean?

A. I mean for the United States Finishing Com-

pany. I am speaking now of my own company. This color was imported from Germany before the war and cost us, if I remember correctly, approximately $1.75 a pound. Within a year or two after the war broke out, before any dyes were made in this country at all, the only source of supply of this color was from either the remnants of the stocks in the hands of the German agents or from speculators. I remember one instance of offering $100 a pound for 100 pounds of that dye and not being able to get it. That is $10,000 for a key of dyestuff that I could have bought for $175 before the war. That is an extreme illustration.

Q. 23. I was going to say that is an extreme illustration. Now, in general, how about the prices of German dyes during the year or two following the outbreak of the war?

A. Oh, the prices were three or four or five times as much as normal prices and sometimes a good deal more than that.

Q. 24. Could they be obtained from American manufacturers?

A. No.

MR. KRESEL: I will continue reading. (Reading from Defendant's Exhibit No. 166-a.)

Now, may I read this letter and then I will be through. This is the letter signed by H. L. Scott, Secretary of War ad interim, taken from the Congressional Record of February 23, 1916, and reads as follows: (Reading)

Does your Honor desire to take a recess now?

THE COURT: Yes, the usual recess.

(Recess until 1 o'clock P. M.)

AFTER RECESS.

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 25. Mr. Imbrie, I believe you said you were an officer of the United States Finishing Company—was that the name?

A. I am treasurer of the United States Finishing Company.

XQ. 26. Is that the same company that Mr. Thompson is President of?

A. Yes, sir.

XQ. 27. Was that company a member of the American Dyes Institute?

A. No.

XQ. 28. You spoke of your going to Washington to see the President; that was subsequent to Mr. Thompson's interview with the President, was it not?

A. About six or eight weeks after.

XQ. 29. Yes. You spoke of "we felt that the position should be emphasized." To whom did you refer as "we"?

A. Mr. Thompson and I had a talk after his return from Washington, and I was referring to Mr. Thompson and myself when I said "we".

XQ. 30. In the memorandum which you said you handed the President, there occurs the following language:

> "The concensus of opinion of those best qualified to know is that the Hill Bill 702, if enacted will enable us to develop an adequate dyestuffs industry of our own."

When you spoke of "the concensus of opinion of those best qualified to know," to whom did you refer then?

A. Well, you will recognize that I am testifying now after an interval of seven or eight years from the time I made this memorandum.

XQ. 31. Yes, I recognize that, Mr. Imbrie, and there is no desire in the world to embarrass you. I am merely trying to get the facts. I am not trying to tie you up or to embarrass you in any way.

A. The whole question of a dyestuff industry being established would have been a matter of considerable importance to us as large users of dyes. We had discussed the matter with other people in the same industry as ourselves, and the matter had been very thoroughly thrashed out at a number of conferences among users of dyes, and what I said there about the opinion of people qualified to know, was presumably based on those discussions.

XQ. 32. Men engaged or connected with the business generally. Now, the Hill Bill was passed, was it not, and became a law?

A. I think so. There have been so many tariff bills down there and so many modifications, I am not certain.

XQ. 33. That is my understanding, that it was passed.

A. I think that it was.

XQ. 34. At a later point in this statement, in the next to the last paragraph, you say:

> "The testimony given at the hearing before the Ways and Means Committee of January 14 and 15, 1916, made it clear that American capital would be instantly available to meet this situation if prompt action was taken by Congress."

Without asking you to go through that testimony, could you state approximately what you meant by "American capital being made available"?

A. Only that it appeared to me from the evidence

of that hearing that there were people who would go into the dyestuff business in a large way if they could be assured of protection. I cannot say anything more specific than that at this late date.

XQ. 35. And, as far as you know, they regarded the Hill Bill as a protection which would enable them to build up the dyestuff industry in the United States?

A. Yes.

XQ. 36. You estimated that the increase in price to the consumer of the proposed duty to be imposed by the Hill Bill would be comparatively small. What did you say it was this morning?

A. I stated here that the increase in duty would probably mean about $5,000,000, and when spread over the total yardage of textiles to which dyes were applied, that it would not make more than one-tenth of 1 per cent. per yard on all of these fabrics on the average.

XQ. 37. You spoke this morning of Rhodamine G. Is that a pink dye?

A. Rhodamine 6 G concentrated is the dye that I referred to.

XQ. 38. It is one of the leading pink dyes, is it not?

A. Yes.

XQ. 39. It is a very prominent dyestuff?

A. Yes.

XQ. 40. Is that now made in this country, do you know?

A. Not that particular shade. A similar dye is made, but not the particular designation that I referred to.

XQ. 41. And that is still imported, is it?

A. Yes.

XQ. 42. Do you know whether it is covered by any patent now owned by The Chemical Foundation?

A. I do not know.

XQ. 43. And you said that the President indicated to you that his idea was that Congress should deal with this dye situation by something analogous to anti-dumping legislation?

A. That was an expression of his opinion as to how the situation could be met. As I recall it, he did not necessarily state that that was an irrevocable decision as to how it could be met; but I know he expressed his opinion in favor of an anti-dumping law.

XQ. 44. An anti-dumping law to be passed by Congress?

A. Yes, sir.

XQ. 45. And was the Hill Bill generally of that type or did it merely raise the tariff?

A. In a general way, I would say that it increased the rates of duty approximately 40 per cent. on dyestuffs.

MR. ANDERSON: That is all, Mr. Kresel.

MR. KRESEL: That is all, Mr. Imbrie. Thank you.

(Witness excused.)

MR. KRESEL: Is it your desire now, Colonel Anderson, that Colonel Miller be called?

MR. ANDERSON: At your disposal.

BRUCE W. DOLD.

BRUCE W. DOLD was called as a witness on behalf of the defendant, and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 1. Mr. Dold, please give your full name, residence and occupation?

A. Bruce W. Dold, residence, Montclair, New Jersey. Occupation, public accountant.

Q. 2. By whom are you employed?

A. Pasley & Conroy, certified public accountants, New York City.

Q. 3. How long have you been employed by Pasley & Conroy?

A. By Pasley & Conroy, since the first of this year only. Prior to that time, Mr. Pasley and Mr. Conroy were both members of the firm of Fedde & Pasley, and I have been with them for three years.

Q. 4. Have you made an examination of the books and records of The Chemical Foundation from April 10, 1919, to December 31, 1922?

A. I have.

Q. 5. I show you the following numbered Defendant's Exhibits: Nos. 91, 91-A, 92, 93, 94, 102, 106, 107 and 108, and ask you to state whether you prepared these documents?

A. I prepared those documents with the assistance of some other men from our office, who were under my direct supervision.

Q. 6. And from what sources did you prepare those?

A. From the books and records of The Chemical Foundation.

Q. 7. I shall not repeat their numbers, but are these exhibits correct transcripts or compilations made by you and by those under your supervision, from the books and records of The Chemical Foundation?

A. They are.

MR. KRESEL: That is all.

THE COURT: Will there be any cross or do you want to defer determining that now?

MR. ANDERSON: Yes, there will be very considerable cross-examination.

THE COURT: Adjourn court until 8.30.

(Whereupon, at 3:40 o'clock p. m., standard time, an adjournment was taken until Wednesday, July 11, 1923, at 8:30 o'clock, standard time.)

BRUCE W. DOLD was recalled as a witness on behalf of the defendant.

DIRECT EXAMINATION (Continued).

By MR. KRESEL:

Q. 8. Mr. Dold, when you were last on the witness stand, I showed you a number of defendant's exhibits. I omitted to show you Defendant's Exhibits Nos. 103, 104, 105 and 83. I now show you these exhibits, and ask you whether you prepared them?

A. I did.

Q. 9. And from what did you prepare them?

A. From the books and records of The Chemical Foundation.

Q. 10. Are they correct?

A. They are.

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 11. Mr. Dold, you have testified as to certain exhibits or statements of figures introduced by the defendant. Did you make up those statements yourself?

A. With the assistance of three or four men from our office, who were under my direct supervision.

XQ. 12. From what source were these statements prepared?

A. From the books and records of The Chemical Foundation.

XQ. 13. Did you check the statements yourself

against the books and records of The Chemical Foundation?

A. I did.

XQ. 14. Against what books and records of The Chemical Foundation did you check those statements?

A. The books of original entry.

XQ. 15. What is that book?

A. Well, those included the cash book, the register, the royalty ledgers, the journals.

XQ. 16. Did you check the vouchers on which those entries were based?

A. Yes, sir.

XQ. 17. When were those statements made up?

A. I think subsequent to April of this year.

XQ. 18. Subsequent to April of 1923?

A. Yes.

XQ. 19. Were they made in May?

A. Well, from that time, right up to the present, those statements have been prepared.

XQ. 20. And are they part of a report upon an audit of the accounts of The Chemical Foundation?

A. They are a special report—no. They are part of them. Part of them are not included in that special report.

XQ. 21. They are not included?

A. There are some that are not.

XQ. 22. There are some of them included in that special report?

A. Yes.

XQ. 23. These figures are made from your annual or semi-annual audits, are they not?

A. They agree with our semi-annual audits, but they were not entirely made from those audits. They were made from the books and the records. The work was done in The Chemical Foundation office.

XQ. 24. Were they made in parts from those audits?

A. To the extent that they agreed with those audits, and in certain cases, we used that report as a basis.

XQ. 25. In certain cases, you used your former audits or reports as a basis?

A. That is true.

XQ. 26. And did not follow the figures back on making up these figures to the original books?

A. Not in all cases.

XQ. 27. Mr. Dold, you have identified and the defendant has filed, as Defendant's Exhibit No. 91, a statement entitled: "A Statement of Income and Expenses from the beginning of operation to December, 1922, of The Chemical Foundation". You recall that statement?

A. I do.

XQ. 28. That is so?

A. Yes.

XQ. 29. That statement shows the gross income of The Chemical Foundation for the period stated at $699,925.83. Have you got it before you, because I shall want to ask you about it?

A. That is Exhibit Number what?

XQ. 30. Exhibit No. 91 and 91-A accompanies it.

A. Yes, sir.

XQ. 31. Can you give me that income under the several heads named in the title "Income" by years from April 10, 1919, down to and including December 31, 1922?

(No XQ. 32.)

A. I cannot.

XQ. 33. I believe I asked you last Saturday if you could make up that statement, did I not? Have you the data from which this statement was prepared of gross income for three and three-quarter years?

A. We have the books and records of The Chemical Foundation.

XQ. 34. Have you not your own reports from year to year on that subject?

A. We have our first report up to June 1, 1921, which bulks that income from April 10th to that date, and from that report it would be impossible for me to segregate that income.

XQ. 35. Mr. Dold, it is possible to segregate that income by years from the books of The Chemical Foundation, is it not?

A. It is.

Mr. Anderson: If your Honor will permit me, Mr. Kresel, I do not want to call for the production of your books here, or to inconvenience the defendant in any way, but I would like to have that information. As I stated to you last Saturday, I feel it is necessary for me to have that information, in order to produce the rebuttal in this case that I desire. I will agree to any reasonable and convenient plan for securing it.

Mr. Kresel: It is quite true, your Honor, that Colonel Anderson, one day last week, I do not remember what day, requested that we furnish that information.

The Court: What specific information?

Mr. Kresel: They desire this total of income, the $661,000-odd, divided by years in detail. This covers three years and nine months. I am informed by our accountant that it would take a force of men two or three weeks and that it would cost a thousand dollars to get that information. The Government has been on our books for a period of six weeks; all this information was available to them; I am informed that their accountants made a complete report to the Government; and there can be no difference as to the total amount, because the Government's own expert on the witness stand testified that that was

according to the books, the total amount of our income. So that it cannot be for the purpose of disclosing that this amount is wrong.

If the Government desires to have the detail, they are perfectly entitled to it. Our books are open to them. They can send their accountants there now and get it; but we do not propose to have this trial delayed for weeks and we do not propose to pay the expense of a thousand dollars to get that information, unless the Court directs us to do it.

MR. ANDERSON: If your Honor please, I have probably been under a misapprehension. I was under the impression, in which I was possibly mistaken, derived from others, that there was a general understanding that the defendant would not have to produce its books, and the stipulation so provides as it would cause it great inconvenience; and therefore we agreed not to have the books produced, but that they might be produced here at any time on our call.

It becomes necessary in the rebuttal, which we will ask leave at the proper time to put in on these figures, to ask to have the earnings or income of this company from various sources—there are only five sources—by years. I am not asking for large detail, but taking the figure which has been given here as the total income, to say how much was earned in 1919, how much in 1920, how much in 1921, and how much in 1922, from the various sources stated.

MR. KRESEL: Colonel, I misunderstood you, then. I understood you to desire us to give the earnings on each patent for each year.

MR. ANDERSON: No, I did not.

MR. KRESEL: That is what the statement you gave me calls for.

MR. ANDERSON: I am speaking now of this statement, Exhibit No. 91. It is gross income. Now, what I wanted to get was the income by years.

MR. KRESEL: That we can obtain for you readily; very glad to do it; but look, Colonel, here is your request in writing. You want the earnings from royalties and license fees by individual patents from April 10, 1919, to December 31, 1922, detailed by years.

MR. ANDERSON: That refers, Mr. Kresel, to Exhibit No. 107. I am now examining on Exhibit No. 91-a. When I get to 107, I will deal with it, and my reasons will have their bearing or not, as the case may be; but I am now discussing Exhibit No. 91-a.

MR. KRESEL: With that understanding, Colonel, we shall be very glad to get you that information. I understand it will take only an hour or two. I am sorry there was that misunderstanding.

XQ. 36. I will ask you, therefore, if you will kindly prepare and give me a statement showing the income from the various sources named in your statement, Exhibit 91-A, by years, and then a summary of the total; and let me have that as soon as you can after getting off the stand.

A. (No answer.)

XQ. 37. Now I will ask you to take the first item in Expenses of Office and General Salaries. Have you an analysis of that item?

A. I have.

XQ. 38. Can you give me that analysis?

A. It is not typed.

XQ. 39. First, I would like to have——

MR. KRESEL: Let us have what is not typed. Let us get one thing at a time.

MR. ANDERSON: Let me make myself clear.

XQ. 39. (Continued.) I would like to have the statement of expenses divided by years, instead of the total for the three years and nine months, as I have indicated with respect to income, and then I could analyze the various items very much more simply; but I must show an analysis of that expense.

THE COURT: We will now take our intermediate recess.

(A short recess was thereupon taken by direction of the Court.)

XQ. 40. Mr. Dold, I asked you for a statement of income by years, which you said you would make up; and then I have asked for a similar division of your Exhibit 91, showing expenses under the various heads by years. I now have in my hand a statement which has been prepared, giving the income and expenses under the headings of your statement No. 1, by years. Will you look at that——

MR. KRESEL: Colonel, it is not necessary to take any time on it. Let the record show that the statement that you now produce was prepared by the Government accountant from our report. I will consent that it go in, subject to correction.

MR. ANDERSON: I then offer in evidence the statement to which I have just referred and counsel has consented shall be introduced subject to correction, showing the income and expenses under the headings given in Defendant's Exhibit 91 by years.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 639." (*See Exhibits, Vol. III, page 1547.*)

XQ. 41. Your statement of income, as there given, does not include any royalties or license fees which

have been collected under licenses of the Federal Trade Commission at all?

A. No, sir.

XQ. 42. This is purely the income of the Chemical Foundation under its licenses?

A. Yes, sir.

XQ. 43. Now I will ask you to take the first item of expense, office and general salaries.

MR. KRESEL: Colonel, it is not claimed by the Government, is it, that The Chemical Foundation received anything under licenses issued by the Federal Trade Commission?

MR. ANDERSON: Mr. Kresel, I was not sure whether in some instances payments had been made to you since July 1, 1921, or not. I merely wanted to make that clear.

MR. KRESEL: In other words, Colonel, I do not want and I am sure you do not want to have any misapprehension about it. I do not want it even by inference to appear that our claim that our total income was $661,706.28 is challenged by the Government.

MR. ANDERSON: Oh, no. All I want to show is that that did not include royalties under the Federal Trade Commission Licenses, as to which you are now asserting claims, whether successfully or not. We agree on that.

MR. KRESEL: I will concede that.

MR. ANDERSON: All right. That is all I want to show.

XQ. 44. Take up the first item of expense, office and general salaries. Could you give me an analysis of that by years?

A. I can in this respect, Colonel—that it includes salaries that are not included in there. In other words, salaries charged to educational literature, all salaries paid by The Chemical Foundation by years.

XQ. 45. Could you limit the educational feature, because I want to take that up as an entirely separate matter?

A. I can.

XQ. 46. Give me an analysis by years of the amounts going to make up that which you have charged here to office and general salaries.

A. I can, but I have not got it prepared at this moment.

XQ. 47. Could you prepare that and let me have it after checking with our accountants, so we can put that in?

A. Yes, sir.

XQ. 48. Very well. I will then have to ask you about it. If you can include there the persons to whom the salaries were paid it will save me a good deal of examination.

MR. KRESEL: May I interrupt again, Colonel, because I think it will facilitate this. Isn't that information already in your previous report, so that you can tear it out of the report and hand it to us?

THE WITNESS: It is, but it is not by years. There was some stipulation that we would arbitrarily take those salaries and divide them on an arbitrary basis for those three years.

MR. KRESEL: Let us see what you have.

THE WITNESS: I have it actually by years here.

MR. KRESEL: I do not want to have this hang over too long.

MR. ANDERSON: No, I am very anxious myself to get through with it.

MR. KRESEL: Here is a statement by years showing the salaries of the office, general office, technical department, giving the names of everybody and the amounts are stated.

XQ. 49. I am going to ask for the same information as to educational, so you can divide the two. Take that up with Mr. Storck and Mr. Page and work it out together, and it would save me a good deal of examination on the detail. Take the item legal expenses, $74,915.35. Can you give me an analysis of that item by years, showing the amounts paid and to whom paid?

A. I can do it, but it will take a little time to prepare it.

XQ. 50. Will you prepare that also with the aid of our accountants and agree on it from your records?

A. Yes, sir.

XQ. 51. I would be glad if you would, and I will not press the question now, but will have to come back to it. The literature and pamphlets—you have divided that into two items, educational and general. How do you arrive at that division, Mr. Dold?

A. Well, that division is more or less determined by the officers of The Chemical Foundation. They state what is for educational and what is the general literature. Now,' I don't think it is an accounting proposition there, Colonel Anderson.

XQ. 52. In other words, you take that division as made upon the books of The Chemical Foundation?

A. Yes; because we cannot go through every pamphlet of literature that those people put out and determine whether it is educational. We would not be in a position to do so, I do not think.

XQ. 53. Mr. Dold, have you that divided by years, into the two different items, educational and general?

A. I have not, other than the way it is put into our four reports. That first period up to June 30, 1921, is detailed by individual items and individual expenditures, but it is not divided by years.

XQ. 54. With respect to educational literature, you have filed an Exhibit 91-a consisting of three

pages and making up the sum total of $340,245.76, but not divided into years. That is the analysis of the items shown on your Exhibit No. 91?

A. Yes.

XQ. 55. Of that particular figure, is it?

A. Yes, it is.

XQ. 56. But you have not the information shown by years?

A. No, sir.

XQ. 57. Have you any similar analysis of your statement on general literature?

A. Well, those two are bulked in the $345,000 there. We have not any other statement.

XQ. 58. You have no analysis of the total $39,197.98?

A. No, sir.

XQ. 59. Mr. Dold, would it be possible to analyze that from your reports and give me a statement on that similar to your analysis on educational literature?

A. Yes, sir. It will take time, as I said before.

XQ. 60. I am afraid I have to ask you to do it, because I want to see what that "general" is. I am sorry about it.

MR. KRESEL: You need not be sorry; we will do everything to assist you. But you have your own accountants, they are at your command. Why can't they do it, and not put the burden upon us?

MR. ANDERSON: I would be glad to do it, but the books are in your charge.

MR. KRESEL: No, the books are open to you for that matter; but you have our reports covering the whole period, in which everything is set forth in detail. All you are asking us to do is to segregate it into years. Your accountants can do that as well as ours.

MR. ANDERSON: I could examine the witness if

I had it in detail, but cannot without it, Mr. Kresel.

MR. KRESEL: We will do anything you want us to do within reason.

MR. ANDERSON: I will ask you, Mr. Dold, for an analysis of the item salaries, $54,295.20, contained in the so-called educational literature for the year 1923, on page 3 of your Exhibit 91-a. I would like to have an analysis of that.

THE COURT: Just a minute. It seems to me there are many things that are lacking for what you consider a complete cross-examination of this witness. Can we not expedite matters by having this witness withdrawn now from the stand, and let your accountants or the defendant's accountants—I do not care which unless I am called upon to determine the matter, and when called upon I will determine it by what I think ought to be done—prepare these things and then have the witness come back for cross-examination.

MR. ANDERSON: I would like to say that I gave a memorandum Saturday that counsel apparently misunderstood. I would be very glad to follow your Honor's suggestion.

MR. KRESEL: There is no objection at all to that. We will co-operate with the Government in every way.

MR. ANDERSON: Then suppose we withdraw the witness. It seems to me that it will save a lot of time.

THE COURT: There are a great many of these matters and he would have to go over it a good many times, perhaps. Have you another witness available?

MR. KRESEL: Yes, I have.

(Witness withdrawn temporarily.)

TWENTY-SEVENTH DAY.

Wilmington, Delaware, July 14, at 8:30 o'clock a. m., Standard Time.

Before:

HON. HUGH M. MORRIS, *U. S. District Judge.*

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

MR. ANDERSON: If the Court please, on the redirect examination of Colonel Miller certain correspondence was put in the record, and in the file there was a letter addressed to Colonel Miller in reply to his letter of April 23, 1921, which last-named letter appears to have been addressed by him to Walter M. Nones. Mr. Kresel asked at the time where that letter was. I did not have it in the file; but I have obtained a copy and I would like to put it into the record this morning to complete the file and to be marked Plaintiff's Exhibit No. 634-A, of course, subject to the same objections that were made to the correspondence at the time.

THE COURT: So admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 634-A." (*See Exhibits, Vol. III, page 1534.*)

BRUCE W. DOLD resumed the stand.

CROSS-EXAMINATION (Continued).

By MR. ANDERSON:

XQ. 61. Mr. Dold, I note that in your statement, Defendant's Exhibit No. 91, you state the income of

The Chemical Foundation from April 10, 1919, to December 31, 1922, from licenses, and so forth, to be $661,706.28, is that right?

A. Yes.

XQ. 62. You have not included in that item revenues derived from trade marks, have you?

A. No, sir.

XQ. 63. Nor have you included in that item the revenues derived from the contracts taken over from the Alien Property Custodian, have you?

A. No, sir.

XQ. 64. Those were what would be the revenues from licenses under patents, plus the licenses under trade marks and under contracts?

A. Do you want me to give you that figure, Colonel?

XQ. 65. If you can give it to me in a figure in a moment.

A. $675,345.10.

XQ. 66. So the total income of The Chemical Foundation under licenses issued by The Chemical Foundation itself from April 10, 1919, to December 31, 1922, would be—what figure did you name?

A. I gave you a figure of $675,345.10.

XQ. 67. Is that correct?

A. Not for licenses. Those pre-war contracts are not licensed by The Chemical Foundation; that is, they are not included in their 379 licenses.

XQ. 68. I understand; but I am getting the elements of the revenues?

A. Yes, but you asked for licenses, Colonel Anderson.

XQ. 69. In order to make up your figure of $699,925.83, which you state as the total revenue, which appears on Defendant's Exhibit No. 91, what do you add to the figure you have just given me?

A. I add royalties and license fees from patents

acquired from others; that is, that were not acquired from the Alien Property Custodian, of $2,166.28. I add contributions received of $11,500, and interest and discounts received, $10,914.45.

XQ. 70. That makes up the total figure of the income of The Chemical Foundation for the period stated?

A. It does.

XQ. 71. I asked you when you were on the stand last if you could give me the details of the item of $205,466.68, for office and general salaries by years. Have you been able to prepare such a statement?

A. In conjunction with your accountants, we have prepared such a statement.

XQ. 72. Will you identify this as the statement made up in accordance with that request?

A. It is.

XQ. 73. That is made up from the books and records of The Chemical Foundation, is it?

A. Not directly. Made from my reports.

XQ. 74. And that report, you explained, had been checked against the original books of The Chemical Foundation?

A. That is right.

XQ. 75. And this statement of detail is correct, Mr. Dold, to the best of your knowledge and belief, is it?

A. It is.

MR. ANDERSON: I would like to introduce that statement, sir.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 642." (*See Exhibits, Vol. III, page 1553.*)

MR. ANDERSON: In that connection I introduced on Thursday, I think, a manuscript exhibit as Plaintiff's Exhibit 639, showing the statement

of income and expenses by yearly periods from the beginning of operations to December 31, 1922. That has now been typewritten and I should like to withdraw the paper introduced and substitute a typewritten copy. It makes a better record.

THE COURT: Let the substitution be made.

XQ. 76. Mr. Dold, on your Exhibit No. 91-A, there was an item of $54,295.20, of which I asked you to supply me the details under the head of "Educational Literature, Salaries and Wages". Will you examine this statement. I understand it was made up by you in connection with our accountants from your original reports. Will you say that that is a correct statement of the detail of that item?

A. It is a correct statement.

MR. ANDERSON: I would offer in evidence the statement identified by the witness as Plaintiff's Exhibit 643.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 643." (*See Exhibits, Vol. III, page 1555.*)

XQ. 77. I requested you to give me, if you could, an analysis of the item of legal expenses as shown on your Exhibit 91 amounting to $74,915.35. Have you prepared such a list in co-operation with our accountants?

A. I have.

XQ. 78. Is this the statement?

A. That is.

XQ. 79. Is that a correct analysis of the item appearing on the exhibit to which I referred?

A. Subject to the notation made on the bottom of the page, Colonel.

XQ. 80. The note to which you refer indicates that the yearly total cannot be made to agree with the amounts. I suppose that is merely a matter of

the keeping of the details of the account. The total is correct and the yearly total is as nearly correct as you can make it?

A. From our reports. Our reports give the date of the invoice and not the date when the actual services were performed. So, in order to get when it was taken on the books, we would have to go back to the books to get it. The total amount is in agreement.

XQ. 81. And you have put it in the years in which the bills were rendered for the service, rather than the actual year for which the service was rendered, which you cannot get without going back to the original document?

A. That is right.

MR. ANDERSON: We offer that statement identified by the witness, in evidence, as Plaintiff's Exhibit No. 644.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 644." (*See Exhibits, Vol. III, page 1557.*)

XQ. 82. I also asked you to prepare for me an analysis of the item of general literature account, from the beginning of operations, down to December 31, 1922, by years. That item on your exhibit already filed, No. 91, was $39,197.98. Have you prepared such a statement.

A. I have.

XQ. 83. I show you a statement; is that the one prepared?

A. It is.

XQ. 84. Is that a correct analysis of that item?

A. Yes.

MR. ANDERSON: I offer in evidence the analysis identified by the witness as Plaintiff's Exhibit No. 645.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 645." (*See Exhibits, Vol. III, page 1558.*)

XQ. 85. Now, Mr. Dold, may I ask how you arrive at the division of expenses between literature and pamphlets general, and literature and pamphlets educational?

A. Well, I think I told you the other day, Colonel; but so far as we determining what is educational and what is general literature, it would be almost impossible for an accountant to determine that. He would have to read the book, and then I do not know whether he would be an authority after he had read the book, to tell whether it was educational or general literature, so that is made entirely by the officers of The Chemical Foundation.

XQ. 86. Now, take "Publication Purposes of The Chemical Foundation". I notice you have divided that one-half to general literature and the other half to education.

A. That is true.

XQ. 87. Was that division made by the officers of The Chemical Foundation?

A. It was, and I think their purposes, if I may so state, was that some of that literature was sent to schools, and some of it was sent out for the mere purpose of showing that The Chemical Foundation was in existence. It was an advertising feature and would go into educational literature.

XQ. 88. But do you know who made that division, half and half between those two?

A. I cannot state.

XQ. 89. Take the item, mailing, postage, envelopes, cartage, express, etc. Those items appear all to have been divided between the two on the basis of one-half to each.

A. Those are the mailing expenses in connection

with the article "The Purpose of the Chemical Foundation".

XQ. 90. You took that from the books of The Chemical Foundation as they had made them up?

A. Yes, sir. Probably there was some inquiry at the time as to why it was done, but I do not recall now.

XQ. 91. You had nothing to do with the distribution yourself?

A. No, we do not make any distributions on the books of The Chemical Foundation.

XQ. 92. These statements are made up from the books as they are, and the distributions are made before the entries are made on the books under the direction of the officers of The Chemical Foundation?

A. That is true.

XQ. 93. You have nothing to do with that yourself?

A. Until we come to check them. If there are any corrections we make them at that time.

XQ. 94. You did not make any corrections in any of those items?

A. Not that I recall.

XQ. 95. I see here an item, American Dyes Institute, Printing, Postage, etc.

MR. KRESEL: What are you reading from?

MR. ANDERSON: I am reading from an analysis I have here of the items in your general literature account, taken from the report of the expert accountants.

MR. KRESEL: That is Exhibit 645.

MR. ANDERSON: Yes, sir.

XQ. 95. (Continued.) American Dyes Institute, Printing, Postage, etc., $2,738.17, is charged to Chemical Foundation General Literature account. Do you know anything about that item?

A. I do not at this moment; no, sir.

XQ. 96. You cannot tell why it was charged to the Chemical Foundation?

A. Well, I suppose the charge was passed or it would not be in there—and probably approved. But why it was charged and what it was for I cannot say at this time.

XQ. 97. I note another item in that account, Printing Hearing before Committee on Finance, $2,640.59. Can you tell me anything about that item?

A. Nothing more than that it was a printing bill which was properly approved.

XQ. 98. And you found it on the books of The Chemical Foundation?

A. It is on the books of The Chemical Foundation.

XQ. 99. I find here an item of $944.79, referred to as Imhoff Tank Booklets, including Postage. Do you know anything about it?

A. What was the amount, again, Colonel?

XQ. 100. $944.79.

A. My recollection is that was a booklet that was printed, sent to all the different municipalities in the country, engineers, etc., setting forth the patents covering those Imhoff tanks and explaining what they were.

XQ. 101. I notice another item, Garvan's Testimony before Sub-Committee, Senate, $6,807.32. Do you know what that was?

A. That was the printing of Garvan's testimony before the sub-committee of the Senate.

XQ. 102. Do you know whether any part of that was charged to educational literature also?

A. I do not know at this time.

XQ. 103. In order to aid you, I refer you to your Exhibit 91-A, Sheet 2, an item, Copies of Statement of F. P. Garvan before Sub-Committee of Senate Finance Committee on the Longworth Bill, $2,863. Do you know whether that is the same matter?

A. I would not like to state at this time, Colonel. I don't. But it reads about the same, so I presume that it is.

XQ. 104. Then if it is the same the cost was divided as follows: $6,807.32 to the General Literature and $2,863 to Educational Literature. Would that be the fact?

A. That would be right.

XQ. 105. The total cost then would be $9,670.32. Passing from that for the moment, I would like to ask you if you have made up a statement of the details by years of the item, Patent Sundry Expenses, appearing on your Exhibit 91-A, as $62,562.08?

A. We have.

XQ. 106. Is the statement which I hand you a correct statement of the detail of that item (handing witness)?

A. Subject to the notation on the bottom of the page. The same as the legal expenses.

XQ. 107. I notice in that item of Patent Sundry Expenses a charge of $23,447.84 to the firm of Emery, Varney, Blair and Hoguet, and I notice on your detail of legal expenses filed a few minutes since an item to the same firm of $17,651.98. Have you any information as to how the charges between Patent Sundry Expenses and Legal Expenses generally were divided?

A. Yes; that is determined from the invoice itself as rendered by Emery, Varney and Hoguet, as to what their services covered.

XQ. 108. Where the service was a general service to the company, it was charged to legal expenses, and where it was related to some specific patent matter it was charged to Patent Sundry Expenses, is that true?

A. Yes.

XQ. 109. The total of those amounts aggregates $41,099.82. Can you state whether that is a total of

payments made to that firm or to the members of that firm during the period covered by these statements?

A. It is not.

XQ. 110. How much more?

A. There isn't any more. There was practically $25,000 of that that has not been paid yet.

XQ. 111. It is an obligation as yet, is it?

A. It is an obligation, so far as the books are concerned; that is the status of the account.

XQ. 112. Mr. Dold, I find under the head of Patent Sundry Expenses an item of $18,162.86. Can you tell me, without putting in the detail of that at the present time, generally what those miscellaneous expenses were, or illustrate them by some character of expense?

A. It would be necessary for me to go back to my reports, my four reports; I can give you generally what they are. I would not like to state that off-hand, because I really do not know.

MR. KRESEL: Have you got your reports there?

THE WITNESS: I have my four reports.

MR. KRESEL: Then go ahead and illustrate.

XQ. 112. (Continued.) If you can look at your reports, I would like to have the illustration.

A. This is our report up to June 30, 1921: Postage, telegrams, notary fees and expenses of various parties from Washington to New York, typewriting, chemists, some salaries.

XQ. 113. Any recording fees there?

A. I believe those are listed separately.

XQ. 114. Yes, I see that.

A. Copies of patents. There are other miscellaneous items appearing here.

MR. ANDERSON: I would like to offer in evidence statement showing the sundry patent ex-

penses by years which the witness has identified, as Plaintiff's Exhibit No. 646.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 646." (*See Exhibits, Vol. III, page 1559.*)

XQ. 115. Can you state, Mr. Dold, whether those miscellaneous expenses aggregating the sum which I have named include any of the expenses for the acquisition of these patents?

A. They do not. I do not just get your question there.

XQ. 116. I mean in connection with the acquisition of the patents by The Chemical Foundation, recording the transfers, or any of the expenses incident to the purchase of the property?

A. No, I think not.

XQ. 117. I note that the item of organization expenses, for which I asked you to give me an analysis the other day, and which was filed, amounting to $11,574.84, the entire amount is charged into the year 1921?

A. That is right; charged up until that time, Colonel.

XQ. 118. The entire amount is in the heading of 1921, in the analysis which we filed this morning by years?

A. I will tell you how that occurred. Up to June 30, 1921 that was carried as a balance sheet item, deferred expense. Late in 1921 they transferred that from a balance sheet item to a profit and loss item; and of course it would appear in the profit and loss section at the time we made the transfer.

XQ. 119. Mr. Dold, is that not the character of expense which should be amortized over the life of the patents?

A. Well, it could be determined such, yes.

MR. ANDERSON: I do not think that I filed this analysis of organization expenses. Was that filed with Mr. Garvan's testimony, do you recall?

MR. KRESEL: I do not recall it.

MR. ANDERSON: I would ask leave to file now the analysis of the organization expenses, the item to which I have just referred, as Plaintiff's Exhibit 647. If it should be found that it has already been filed in Mr. Garvan's evidence, then I would ask that it be not duplicated in the record.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 647." (*See Exhibits, Vol. III, page 1560.*)

MR. KRESEL: Colonel, I do not quite understand. You have asked the witness whether this organization expense does not all appear in 1921. This exhibit you have just put in shows the items in 1919 and 1920. I think there is going to be some confusion in the record unless you make it plain. It certainly is not plain to me.

XQ. 120. I asked you that for that reason. In the statement of analysis of expenses by years, which we filed this morning, the entire item of organization expenses aggregating $11,574.84, statement of which I have just filed, appears as being charged upon the books during the year 1921?

A. That is right.

XQ. 121. And you have explained that that was carried in a balance sheet item, although some of those expenses were incurred prior to 1921, and it was all taken into the 1921 accounts in the manner which you explained in your former testimony; is that true?

A. Yes. May I explain further on that, Colonel?

XQ. 122. Yes. I would be very glad to have you do it.

A. Up to June, 1921, that item was carried as a balance sheet item. The profit and loss accounts of the previous years had been closed out, and we could not go back and open those profit and loss accounts for those years, so that at the time that transfer was made in 1921, some time, and the expenses of publicity were all charged for the year 1921, and that is why it appears on the books of The Chemical Foundation.

MR. KRESEL: Where does Colonel Anderson get these dates he has just put in? Your Honor will pardon me, I want to get it straight, just this last one that Colonel Anderson put in, that is what I would like Colonel Anderson to make plain.

XQ. 123. The item to which I have just referred, appears on Plaintiff's Exhibit No. 639 under the year 1921 and your explanation of its appearance there is that which you have just given, that is clear, is it not?

A. Yes.

By MR. KRESEL:

XQ. 124. Although the expenditures were in fact made in 1919 and 1920?

A. That is right.

MR. KRESEL: According to this exhibit you have last put in.

MR. ANDERSON: I have no objection. I want the facts to appear.

By MR. ANDERSON:

XQ. 125. Now, do you know why this amount was not earlier charged off to expense, if it was an organization expense?

A. Well, all companies and all accountants do not charge off organization expenses. It may be carried as a balance sheet item.

XQ. 126. As an asset?

A. As a deferred asset, that is, it will be charged off over a period of years.

XQ. 127. That is exactly what I asked, when it was being carried over two years as a deferred item and no part charged off, why was it not carried over a period of years, instead of all put into 1921, do you know?

A. That is probably a decision of the board of directors, that they want the item off the books, off the balance sheet.

XQ. 128. You have no record of the board to that effect, have you?

A. I have not.

MR. ANDERSON: This has not been typed. I will introduce it with your permission and substitute a typewritten copy.

XQ. 129. Have you seen that statement, travelling expenses (indicating)?

A. I have not.

MR. KRESEL: All right, Colonel, you can put that in, subject to correction.

MR. ANDERSON: I now offer in evidence analysis of the item of traveling expenses, as shown on Defendant's Exhibit No. 91, amounting to $13,249.21. This exhibit has not yet been typewritten, your Honor, and counsel on the other side have not had a chance to check it. I will, therefore, offer it and have it marked, and ask leave to withdraw it, and have it typewritten and substitute the typewritten copy for it, of which a copy will be submitted to counsel.

THE COURT: Admitted under the conditions stated.

MR. KRESEL: Subject to our correction.

MR. ANDERSON: Of course.

XQ. 130. Turning to the item of rent, $27,500, as shown in your Exhibit No. 91, is that the rent for the New York office?

A. It is.

XQ. 131. Mr. Dold, how many offices do The

Chemical Foundation have covered by that item of rent?

A. I think there is only the one rent charged in that item, Colonel, and that is made out from New York.

XQ. 132. I mean, how many office rooms are there at the 81 Fulton Street office, do you know?

A. I should say about fourteen rooms.

XQ. 133. And that item for the years 1920, 1921 and 1922 was $27,500 a year?

A. To the best of my knowledge. There may be other rents in there, but I do not think so.

XQ. 134. That did not include the rental of any Washington office, did it? For the moment I will skip a number of the intervening items and come to those which I understand you have analyzed. The first is the Washington office expense, aggregating $23,389.26, all of which is charged in the years 1921 and 1922, as I notice. Have you analyzed that?

A. Yes, sir.

XQ. 135. Is the statement which I hand you a statement of analysis of that?

A. Yes.

XQ. 136. That is correct from the books of the company, is it?

A. It is correct from our reports.

XQ. 137. You believe your reports to be a correct statement of the books?

A. Yes.

XQ. 138. I note a charge of $9,750 to Mr. W. F. Keohan. Is he the manager of the Washington office, do you know?

A. He is the representative, as I understand it, of The Chemical Foundation in Washington.

XQ. 139. I note an item of rent of the Washington office of $1,415. Do you know whether that is for one office in Washington or for more than one office?

A. One office, I believe.

XQ. 140. You do not know how many rooms are used there, do you?

A. I do not.

XQ. 141. I note an item of travelling expenses of Mr. Keohan, aggregating $2,113.03 for two years. Have you the details of those travelling expenses?

A. I have in my reports.

XQ. 142. Could you produce them, please?

A. Do you want me to read this? I have got to go through the four reports.

XQ. 143. I do not want to take up the time to read it. Would it be possible to make it into a statement? If you gave us the reports, could we do it?

A. You have the reports.

XQ. 144. We have three of them. We have not got the others. I do not want to take up the time to make it up now, nor do I want to take the time to read those sheets into the record; but I do want the details of those expenses.

MR. KRESEL: Colonel, how do you mean make it up? He has got it there. He can take it out of the report and give it to you if you like.

MR. ANDERSON: For the two years?

MR. KRESEL: Well, whatever the period is.

MR. ANDERSON: It only covered a period of two years, 1921 and 1922. If you can take it out of your report and give it to me I would like to have it.

THE COURT: Do you want to take your report apart?

THE WITNESS: That is up to Mr. Buffum, your Honor, and he says he would not care to do it.

MR. KRESEL: Suppose we assume it to be marked in evidence and we will have copies made and supplied.

MR. ANDERSON: That is all right; or we will

have copies made. It is only a detail of getting the thing in, in the most convenient way.

MR. KRESEL: Let him point out what the pages are.

THE COURT: How much of it is there, roughly?

THE WITNESS: I will have to go through all four reports.

MR. ANDERSON: There are only two of them.

THE WITNESS: I imagine it appears on one page.

THE COURT: Then why not hand it to the stenographer and have him write it right into the record.

MR. ANDERSON: There is quite a good deal of detail, your Honor.

THE WITNESS: There is quite a bit of detail.

MR. KRESEL: I think, your Honor, perhaps it would be better to have a copy made and put it in.

MR. ANDERSON: Then I will now offer in evidence the sheets from the reports of the accountant of The Chemical Foundation, covering the period 1921 and 1922, showing the details of expenses of the Washington office, and I will hand that in as one exhibit later.

THE WITNESS: You mean appertaining to travelling expenses?

MR. ANDERSON: No, the detail of the Washington office as a whole.

THE WITNESS: That will take more than four sheets, I can tell you that.

THE COURT: That is not the same matter that you inquired about.

MR. ANDERSON: I was trying to shorten it, and if I could put that in I was not going over the details of it.

MR. KRESEL: You have had a copy of our report, you have had it for months; the informa-

tion is available to you and has been available to you. Why can't your accountant make that up from our report?

MR. ANDERSON: I am perfectly willing to do it—perfectly willing.

MR. KRESEL: Let him make that up and show it to our accountant, and if it is all right, there is no objection to its going in.

MR. ANDERSON: The only thing is that we have not been able to find the report for one period of six months.

MR. KRESEL: We will give it to you.

MR. ANDERSON: I have sent to Washington and have a man looking for it. Let me have that and we will have the statement made up and submit it to you.

MR. KRESEL: We will lend it to you with great pleasure. It is the only other copy we have.

MR. ANDERSON: Very good. Then it is probably better to leave that as it stands, and I will introduce as one exhibit the detail of the expenses of the Washington office.

MR. KRESEL: Very well, just give us an opportunity to examine it before you put it in.

MR. ANDERSON: I offer in evidence now, first, before the details, a statement which the witness identified as an analysis by years of expenses of the Washington office, as Plaintiff's Exhibit No. 649.

Received in evidence and marked "Plaintiff's Exhibit No. 649." (*See Exhibits, Vol. III, page 1562.*)

MR. ANDERSON: I offer in evidence, to accompany that, a statement consisting of a number of pages showing the details of the expenses of the Washington office, as shown on this Exhibit No.

649, and ask that that be admitted as 649-A to the end that they may be read together.

THE COURT: To be supplied?

MR. ANDERSON: To be supplied.

THE COURT: It is admitted.

Received in evidence, considered marked "Plaintiff's Exhibit No. 649-A." (To be furnished.) (*See Exhibits, Vol. III, page 1563.*)

MR. ANDERSON: We will furnish that.

XQ. 145. I asked you if you could give me an analysis by years of the item Miscellaneous Expenses, amounting to $12,448.79. Have you been able to make up such a statement with our accountants?

A. Yes, sir.

XQ. 146. Is this the statement, Mr. Dold (handing witness)?

A. That is right.

XQ. 147. That is correct, from your reports on the books of The Chemical Foundation, is it?

A. It is.

MR. ANDERSON: I offer in evidence the statement identified by the witness, analysis of Miscellaneous Expenses, from beginning of operation to December 31, 1922, as "Plaintiff's Exhibit No. 650."

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 650." (*See Exhibits, Vol. III, page 1581.*)

XQ. 148. Mr. Dold, I see an item of expense in your Exhibit 91, carried over the years 1919, 1920 and 1921, aggregating $3,427.45, under the head of Office Alterations. Are alterations of the New York office?

A. Yes, sir.

XQ. 149. By referring to your Exhibit No. 91 and reading in connection therewith Plaintiff's Exhibit 639, which you have introduced this morning, it appears

that for the year 1920 the company made a net profit, after charging up all expenses shown by those exhibits for that year, of $49,396.85, not including educational expenses; is that right?

A. That is right.

XQ. 150. Take the year 1921. Taking Exhibit 91 in connection with Plaintiff's Exhibit 639, it appears that after charging up all expenses indicated on that exhibit other than educational expense, the company made a net profit of $76,403.82, is that right?

A. That is right.

XQ. 151. Take your Defendant's Exhibit 91 read in connection with Plaintiff's Exhibit 639 introduced this morning for the year 1922, it appears that after charging up all expenses indicated thereon with the exception of educational expense the company made a net profit of $128,828.68; is that correct?

A. That is right. Of course, we have the year 1919 there.

MR. KRESEL: He does not want that. That is a loss.

MR. ANDERSON: I am perfectly willing to put it in. It only shows increasing earnings right straight along, year by year. It shows on the exhibit. But I want to show the years that they operated for full years. That is all.

XQ. 152. For the year 1919, since that question has been raised, the gross earnings of the company were $28,787.98, were they not?

A. That is right.

XQ. 153. For the year 1920 the gross earnings were $167,492.73, were they not?

A. That is right.

XQ. 154. For the year 1921 they were $233,369.24, were they not?

A. That is right.

XQ. 155. And for the year 1922 they were $270,275.88, were they not?

A. That is right.

XQ. 156. You have already filed an analysis of the educational expense as Defendant's Exhibit 91-A, I think, from your books. That is in evidence I think.

MR. KRESEL: Yes, that is in evidence.

XQ. 157. When you were last on the stand I asked you if you would give me a statement of the educational expense by years. Have you been able to do that?

A. Not from our records down here. I would have to go back to the books to get that; the original vouchers. Postage, expressage and distributing charges on our reports do not show as to what literature it was chargeable to in all cases, so I would have to go back to the books in order to get that.

XQ. 158. Turning to Defendant's Exhibit 83, showing statement of income from licenses, April 10, 1919, to December 31, 1922, I believe you stated you prepared that statement, did you not?

A. That is right.

XQ. 159. That does not of course include any income from Federal Trade Commission licenses?

A. No, sir.

XQ. 160. It does not include any income from import royalties?

A. No, sir.

XQ. 161. It does not include the income from contracts assigned to The Chemical Foundation by the Alien Property Custodian?

A. No, sir.

XQ. 162. It only includes, therefore, the income strictly from licenses issued by The Chemical Foundation for manufacture and sale in the United States?

A. That is right.

XQ. 163. And in order to arrive at the complete

earnings, it would be necessary to add to that the import royalties and revenues derived from contracts?

A. That is right.

XQ. 164. And the item of any accrued royalties in the hands of the Federal Trade Commission would then still be for consideration?

A. That is not up to me. I do not know about that.

XQ. 165. Now, Mr. Dold, can you tell me how you arrive at the earnings per patent?

A. As to the imported products, as shown on our schedule 107, I believe it is, the actual patent was determined in that case. In other words, if the import be imported under a certain patent, that patent got the credit for that income, in respect to the manufacture of the product; wherever it was more than one patent under any license, that income was apportioned to each of the patents equally, as they appear under that license. In other words, if there were five patents, each patent received one-fifth of that total income coming in under that license.

XQ. 166. Mr. Dold, could you tell under which patent the income was on?

A. I cannot, that is, from the licensed products, you mean?

XQ. 167. Yes, I am speaking now of your statement 83?

A. As pertaining to manufactured product?

XQ. 168. Yes.

A. Imports, yes, but the manufactured products that were licensed in this country—no.

XQ. 169. Then your distribution of earnings per patent, was purely arbitrary, was it not?

A. Right for manufactured product.

By Mr. Kresel:

Q. 170. That is where there was more than one patent?

A. Where there was more than one patent, I explained that before.

MR. ANDERSON: That should be on re-direct, I think.

MR. KRESEL: But you took advantage of that answer.

MR. ANDERSON: I do not know what the answer was.

MR. KRESEL: Then why did you interrupt?

MR. ANDERSON: I object to counsel speaking to the witness on the stand as to amending his answer. If he wants to ask the witness a question and interrupt the examination, in order to bring it out fully, I would not object at all, if he said to me—may I supplement that other question here to make it complete; but I cannot examine two witnesses at once. I think that the proper way to do that, is to ask to interrupt the cross-examination to the end that the answer may be complete and not suggest to the witness an addition to his answer.

THE COURT: Do you want a ruling?

MR. ANDERSON: No, sir. I do not. I am merely replying to counsel's protest.

By MR. ANDERSON:

XQ. 170-a. Now, Mr. Dold, suppose there were five patents under a license, and one expired in 1920; another one in 1921, another one in 1922, and so on each year—or vary the dates as you see fit—how would you then apportion the earnings between those patents?

A. That statement was apportioned on that same basis. If the patent expired, it received its proportion of the income just the same.

XQ. 171. If it expired in 1923, would you continue to charge up income to that patent, or credit in-

come to that patent; let us suppose that out of five, two expired in 1920 and 1921. Then in 1922, would you continue to credit income to that patent, or would you increase the proportionate amount of the other three patents?

A. No, you continued to charge as on that statement, but I have prepared since that time a statement showing what adjustments were made where a patent had expired, if we stopped giving that patent income from the date of its expiration—I have prepared a statement which will show what that adjustment will make in respect to expired patents.

XQ. 172. Now we will take the Atmospheric Nitrogen Company license No. 146. Under that there are apparently some fifty patents.

A. Oh, more than that.

XQ. 173. Whatever the number is; it is immaterial whether it is fifty or seventy-five. Let us suppose that those patents expired at varying dates from one to fifteen years after the license was issued. In making up the statement 83, how would you apportion the income?

MR. KRESEL: I object to that as a hypothetical question.

THE COURT: Do you want the answer? You may have it if you want it.

A. In making up statement 83 there is no distribution among patents of the income. It is stated under the license and not under the patent.

XQ. 174. Let us take up the statement No. 107 in the same connection, and there you have apportioned the income to each patent, have you not?

A. That is right.

XQ. 175. For the period from April 10, 1919 to December 31, 1922. Now, as I understand from your

testimony, that is a purely arbitrary apportionment of the patents, is it not?

A. Yes, sir.

XQ. 176. And the same applies to expenses, does it not, as apply to patents?

A. We have made no distribution of the expenses.

XQ. 177. I thought that you had made up a statement which was put in here the other day, showing the income per patent and the expenses per patent and the resultant revenue or loss per patent.

A. Oh, the average expense per patent, yes.

XQ. 178. The average expense per patent?

A. Yes.

XQ. 179. And you averaged the expenses of the company over the number of patents, regardless of whether they were earning or not earning?

A. That is right.

XQ. 180. And you also averaged them over the number of patents that were actually earning, did you not?

A. That is right.

XQ. 181. And in that way by merely averaging up on those patents you undertook to show what a patent was earning, is that right?

A. That is right.

XQ. 182. And in your statement Defendant's Exhibit No. 107, you also defined these patents as dye and chemical and optics and various other definitions which appear on the statement. Did you make those definitions?

A. I did not. That was done with the aid of a chemist of The Chemical Foundation, Dr. Jovce.

XQ. 183. You can not testify as to the correctness of that designation in the patents, can you?

A. No, sir.

XQ. 184. And do not undertake to do so?

A. No, sir.

XQ. 185. In your Exhibit No. 90 I notice you show the number of licenses issued by years. In the year 1922 you issued apparently forty-one licenses, is that right?

A. I do not have that exhibit before me.

XQ. 186. That is Defendant's Exhibit No. 90?

A. I do not have that.

MR. KRESEL: Here it is; use the original.

XQ. 187. In the year 1922 you issued forty-one licenses, did you not?

A. Yes.

XQ. 188. And they covered fifty-one patents, did they not?

A. That is right.

XQ. 189. Of which eleven had already been licensed, is that right?

A. Eleven were originally licensed.

XQ. 190. Eleven originally licensed?

A. Yes.

XQ. 191. What were your expenses, other than educational, for the year 1922?

A. My copy is very faint here, Colonel. $141,437.20 for 1922.

XQ. 192. In the year 1921 you issued 161 licenses. What were your expenses that year?

A. $156,965.42, exclusive of education.

XQ. 193. I am excluding education. In the year 1920 you issued 131 licenses. What were your expenses that year?

A. $118,095.88.

XQ. 194. In the year 1919 you issued 46 licenses. What were your expenses that year?

A. $90,852.77.

XQ. 195. You introduced as Exhibit No. 92 a statement showing the alleged cost of patents, trademarks and other properties.

MR. KRESEL: Showing the cost, not the alleged cost.

XQ. 195. (Continued.) Mr. Dold, you have not that statement analyzed, showing the cost of each group assigned, have you?

A. Yes, sir.

XQ. 196. And the average cost of each group assigned?

A. Not the average; no, sir.

XQ. 197. Then it is unnecessary to ask you, because you can not analyze it on the stand. Taking your Exhibit 102, how did you arrive at the expense per trademark and the earnings per trademark shown by those exhibits; in the same way that you did as to patents?

A. Exactly.

XQ. 198. You took the earnings and averaged them as you stated as to patents?

A. Over 6,475 properties.

XQ. 199. Mr. Dold, taking up now the earnings from contracts assigned to The Chemical Foundation by the Alien Property Custodian, in which you show earnings or collections under those contracts aggregating $2,442.06, have you ever examined the record to see which, if any, of these patents have been licensed by The Chemical Foundation?

A. I have not.

XQ. 200. Do you know whether or not licenses have been issued under the same patents that contracts were held under before the assignment from the Alien Property Custodian?

A. I do not.

XQ. 201. Then you cannot testify on that. Mr. Dold, in your statement Exhibit No. 117 you purport to give the value of dyes domestic and imported controlled by Foundation, owned by The Chemical Foun-

dation, Inc., for the years 1919, 1920, 1921 and 1922, as compared with the Tariff Commission reports of total sales domestic and imported. Did you make up that statement?

A. I did not make up that statement and I do not believe I testified that I made up that statement. That is not my statement.

XQ. 202. Do you know who did make it up?

A. Well, I imagine someone in the office of The Chemical Foundation. As to who it was I could not tell you.

XQ. 203. You cannot testify about it at all, then, can you?

A. No, sir; because I had nothing whatever to do with it.

XQ. 204. Mr. Garvan said he did not. Who did, then, do you know?

MR. KRESEL: Mr. Buffum did. I will be very glad to call Mr. Buffum on that if you desire, Colonel.

MR. ANDERSON: I, of course, have moved to strike that out, because Mr. Garvan said he did not make it up, and I presumed you would put on a witness who did make it, so that he could be submitted for cross-examination.

MR. KRESEL: I would be very glad to do that.

MR. ANDERSON: Then with that understanding, and, further, that you lend us that six months report over the week-end so we can work on it, I do not think I have any other questions at the present time to ask this witness.

MR. KRESEL: That is all, Mr. Dold. I will call Mr. Buffum now and get through with that right away.

(Witness excused.)

WILLIAM W. BUFFUM.

WILLIAM W. BUFFUM, was called as a witness, on behalf of the defendant, and being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 1. Mr. Buffum, have you given your name and address?

A. My address is Bloomfield, New Jersey.

Q. 2. And what is your occupation?

A. Auditor.

Q. 3. By whom are you employed?

A. Chemical Foundation.

Q. 4. How long have you been employed by them?

A. Two years.

Q. 5. Please look at Defendant's Exhibit's 117 and 118 and state whether or no you prepared those?

A. I did.

Q. 6. Will you state from what you prepared them?

A. Tariff Commission reports and the books of The Chemical Foundation.

Q. 7. And do those two statements correctly show the figures of comparison between imports by amounts and by weight, as compared between such as came in under licenses of The Chemical Foundation and such as came in that were not covered by such licenses?

A. They do.

MR. KRESEL: Now, Colonel, you may examine the witness.

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 8. Mr. Buffum, you were accountant for the Alien Property Custodian, were you not?

A. I was.

XQ. 9. For what period?

A. From December, 1917 to July 15, 1921.

XQ. 10. Then you went from there to The Chemical Foundation?

A. I did.

XQ. 11. And have since been employed by The Chemical Foundation?

A. I have.

XQ. 12. What was your position with the Alien Property Custodian?

A. Chief accountant.

XQ. 13. In the statement Defendant's Exhibit No. 117 to which you have already referred, I understand that you took the figures under the title of "Tariff Commission Report" from the official figures of the Tariff Commission?

A. Correct.

XQ. 14. You checked those figures personally, did you?

A. Yes, sir.

XQ. 15. This statement, of course, does not include any royalties on products produced under the licenses of the Federal Trade Commission?

A. Absolutely not.

XQ. 16. This represents purely The Chemical Foundation licenses?

A. Yes, sir.

XQ. 17. How did you arrive at the production under the licenses issued by The Chemical Foundation?

A. I do not show production.

XQ. 18. Well, how did you arrive at the value of the production under licenses issued by The Chemical Foundation?

A. By taking the amount of royalty paid under those licenses and the amount of royalty was averaged as four per cent.; that is, taking all the licenses ranging from five per cent. down, getting an average roy-

alty rate, which is four per cent., and multiplying the royalty by 25, to get the value of the dye.

XQ. 19. So you did not undertake to arrive at the production under those licenses or the value of the production under those licenses or of patents covered thereby, from original sources at all, did you?

A. No, they are not available.

XQ. 20. Are not many of those licenses based on the net sales instead of gross sales?

A. Practically all.

XQ. 21. Then, in that event, the amount, or rather the value of the production under Chemical Foundation licenses, would not compare with the value taken from the Tariff Commission, would it; how do you make those comparisons?

A. I will explain, that gross sales and net sales under The Chemical Foundation licenses are almost identical as to accounting. There are only certain deductions allowed from the actual selling price.

XQ. 22. Who fixes those deductions?

A. I do, in the accounting. The policy is fixed by the board of directors of course.

XQ. 23. Who arrives at the amount of the sales under licenses by The Chemical Foundation?

A. The company that is licensed.

XQ. 24. It reports its sales to The Chemical Foundation; is it reported in the form of net sales, or gross sales?

A. The licenses are issued for net sales, and reported that way. Those for gross sales are reported that way. However, there is practically no difference in the method of accounting between gross and net, for the reason that the deductions are limited.

XQ. 25. Can you tell me what deductions are allowed from gross sales in arriving at net sales on which royalties are paid?

A. In either case the actual amount of money re-

ceived by the manufacturer for his product is determined by either net or gross sales, regardless as to how the license reads.

XQ. 26. When you say the actual amount of money, are the expenses deducted before you arrive at the amount of money which the manufacturer receives?

A. No, sir. The actual check that he receives from the consumer is what we base our royalty on, and there are no deductions allowed from that, unless it should be freight or carrying charges, but that must be deducted from the consumer's bill, or we do not allow it.

XQ. 27. I see. Now, Mr. Buffum, you have stated as a second item on this, the income from domestic production by years under licenses issued by The Chemical Foundation; is that true?

A. That is correct.

XQ. 28. Now, how do you arrive at the production by years, under licenses issued by The Chemical Foundation?

A. By taking the royalties from the books.

XQ. 29. Taking the royalties from the books; so that in the end, the basis of your figures here are the books of the several manufacturers or licensees, are they not?

A. The reports of the several licensees to us, as to the amounts that are on their books. I have not personally examined all of the books of all the licensees, I have some of them, but not all.

XQ. 30. Have you ever examined the books of the licensees or undertaken to ascertain from such examination whether they included all manufacturers or sales by them under these patents covered by the licenses or not?

A. I have some, and we are gradually doing the rest as far as possible.

XQ. 31. How do you determine whether a product is produced under the patent or not?

A. I do not get that, Colonel.

XQ. 32. Well, suppose a licensee has half a dozen different patents, for either chemical or dyestuffs of various kinds, how do you determine whether that product is produced under the patent or not, or whether it is by a modified process, or whether it is the process described in the patent?

A. We do not determine. The licensee admits. There is nothing to determine.

XQ. 33. I see. You accept his statement as to the production under the several patents?

A. Sure, so long as he pays his royalty.

XQ. 34. You do not undertake to ascertain for yourself, or for The Chemical Foundation rather, whether he is reporting the amount of his production under the patents covered by his license, or whether it is an accurate report or not?

A. Only by his own books as we get to them to audit them, that is all.

XQ. 35. And when you audit them, you check his books or reports, his accounts, against the reports rendered to you as an auditor?

A. No. We make an audit of the particular products covered by the license, and then come back and compare them.

XQ. 36. How do you find out what products are covered by the licenses?

A. We know before we go, what products are covered by the license. The license specifies what the products are.

XQ. 37. Suppose it is a process patent?

A. It covers the products, nevertheless. It is a process for the product.

XQ. 38. And you determine whether it is made under that process or not?

A. I do not determine that. They admit it.

XQ. 39. In order to admit it, don't they have to determine what they make under the patents and what they do not?

A. They do, before they take a license, if I understand you correctly.

MR. ANDERSON: I do not think you do. However, I think I understand what you mean. It is sufficiently clear.

XQ. 40. Now, taking The Chemical Foundation, Inc. income from imports by years, how did you arrive at those figures?

A. From the books of The Chemical Foundation, the royalties paid.

XQ. 41. From the books?

A. Yes.

XQ. 42. Only from those books?

A. That is all.

XQ. 43. Upon what basis were those books made up?

A. The royalties received.

XQ. 44. And the royalties received or paid to The Chemical Foundation were based upon the reports of importers?

A. Yes, in most instances. I might say that we audit the books of importers more frequently than we do of manufacturers.

XQ. 45. Have you personally audited all the books of the importers who were importing under licenses of The Chemical Foundation?

A. Not personally, no.

XQ. 46. How many of the manufacturers and vendors, dealers in, material covered by licenses of The Chemical Foundation have you personally audited, Mr. Buffum?

A. I should say 25 or 30 up to date.

XQ. 47. Twenty-five or thirty out of the total number shown by the statement?

A. And I have supervised the auditing of some others.

XQ. 48. What do you mean by supervised it?

A. Sending our men there, supervising their work, checking it after it has been done.

XQ. 49. You have not been there yourself?

A. Not in some instances. In a great many I have.

XQ. 50. You are not a manufacturer yourself?

A. No, sir.

XQ. 51. Never had any experience in manufacture of either dyes or chemicals?

A. No, sir.

XQ. 52. Do you know if The Chemical Foundation has had any one check the processes of manufacture of the various licensees to ascertain if they are manufacturing under the licenses?

A. It has been done in one or two instances, I believe, where there was a question on it.

XQ. 53. Would you mind stating those instances and who did the checking?

A. There was one instance, I believe of the Dahl Chemical Company, and a chemist of ours did the checking.

XQ. 54. Who was the chemist?

A. Mr. Linz.

XQ. 55. Do you recall any other instance?

A. Not where the actual process was checked, no.

XQ. 56. Further down in this statement you make up a statement of the value of sales of domestic and imported products under The Chemical Foundation patents for four years; domestic $6,756,992, imported, $3,652,928.70, or a total of $10,409,922.70. You arrived at these figures in the same manner you have

described as to the figures of domestic production and importation above?

A. Colonel, they are simply a summary of the two figures above.

XQ. 57. I mean, they are based on the same method of arriving at the figures?

A. Oh, yes.

XQ. 58. And then you averaged the license rate under all licenses whether on gross or net sales, and arrived at an average rate and applied that on the products reported to you as having been manufactured or imported, as the case may be, by the licensee of The Chemical Foundation; am I right?

A. That is correct on manufactured products. The import royalty is accurate. That is not averaged.

XQ. 59. On your statement 118, your first item is the amount of domestic production of dyes for the years 1919, 1920 and 1921. That is a summary from the official report of the Tariff Commission, is it?

A. Same report, yes, sir.

XQ. 60. Your next item is produced under Chemical Foundation patents from 2/10/19 to 12/31/22. Should that not be 4/10/19?

A. It should be. It is a typographical error.

XQ. 61. We will assume it is 4/10/19. That is from the date of the large assignment to The Chemical Foundation to December 31, 1922, is what you mean there?

A. That is correct.

XQ. 62. That there was produced under patents licensed by The Chemical Foundation 3,273,405 pounds of dyes?

A. That is right.

XQ. 63. How did you arrive at that figure?

A. From the royalty reports submitted by the manufacturers.

XQ. 64. They submit the amount of production of dyes under those licenses?

A. They do.

XQ. 65. And you based your figures upon their reports?

A. Yes.

XQ. 66. Do those reports show the number of pounds of production in each case?

A. Practically in every instance, and where they did not I obtained it.

XQ. 67. You obtained it by writing to the manufacturer?

A. I did.

XQ. 68. You never personally checked their books to see the amount of production under the particular patents, did you?

A. In the case where I audited their books I did.

XQ. 69. You merely audited their account books?

A. Well, yes.

XQ. 70. You did not undertake to follow it through the factory to see whether that is an actual production or constitutes the entire production under those patents or not?

A. I did not.

XQ. 71. So far as you know no one ever has?

A. So far as I know.

XQ. 72. Further down you have the importation of dyes under Chemical Foundation patents, and there is the same error in your figures; it ought to be 4/10 and not 2/10.

A. That is right.

XQ. 73. They amount to 1,346,634 pounds. How did you arrive at that?

A. The same way, from the importers' reports to us.

XQ. 74. The importers' reports to you?

A. Which are checked more frequently.

XQ. 75. You did not undertake to arrive at the amount of importation under any particular patent at all, did you?

A. Absolutely did.

XQ. 76. Wasn't it just an aggregate?

A. No, absolutely did, under each patent that we owned.

XQ. 77. How did you get at that importation under each patent?

A. The importer keeps his books that way, by patents, for the imported products.

XQ. 78. Suppose a product imported involves the use of several patents in its manufacture, how does he apportion it?

A. Well, it does not on imported products. There is only one patent. It has to be a product patent or you do not collect.

XQ. 79. You do not collect?

A. No.

XQ. 80. You have never made any check to see whether there is any infringer on any of these patents, have you?

A. A number, yes, I have.

XQ. 81. Where?

A. I have not decided the infringement, but I have made many checks to determine whether or not there was enough evidence to give to experts to find out.

XQ. 82. And you would decide what the evidence was?

A. Yes.

XQ. 83. Whose works have you checked for that purpose?

A. The only works that we ever got as far as that was the Dahl Chemical Company; but usually you do not have to go that far, you can usually settle it by conference.

XQ. 84. How many infringements have you had or settled, do you know?

A. I do not know whether that license report that you have will show or not, but in most instances it results in a license and they pay up for past infringement. There are a great many of our licenses that came that way.

XQ. 85. You spoke of checking up infringement. You meant that if you found a man who was infringing you would get after him. Have you ever checked your licensees to determine whether they were reporting fully or not?

A. I am doing that gradually, right along.

XQ. 86. You check the accounts, do you?

A. I do.

(Witness excused.)

MR. KRESEL: I will call Dr. Parsons.

JULIUS STIEGLITZ.

JULIUS STIEGLITZ, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 1. Professor Stieglitz, I wish you would give to the stenographer your full name and your residence?

A. Julius Stieglitz; residence, Chicago.

Q. 2. How old are you, if I may inquire?

A. I was born in 1867.

Q. 3. Born in the United States?

A. Yes.

Q. 4. Where were you educated?

A. My university education I had in Germany.

Q. 5. What university there?

A. I took the Ph. D. at the University of Berlin in 1889.

Q. 6. And what have been your activities since your graduation from the university?

A. I returned to this country at the end of '89, spent one year at research at Clark University, two years then with Parke, Davis & Company, a pharmaceutical house, and chemical laboratory, and then since 1892 I have been at the University of Chicago.

Q. 7. So since 1892 you have been with the University of Chicago.

A. I have been.

Q. 8. In what capacity have you been with the University?

A. Well, I rose from the rank of assistant; now I am chairman of the department and have been since 1915, and my most important work was along the lines of graduate instruction in organic chemistry.

Q. 9. And you now hold the title of professor?

A. Professor, yes.

Q. 10. Of organic chemistry?

A. No, it is Professor of Chemistry, but my chief activity is in organic chemistry, lecturing and training, research men, candidates for the Ph. D. degree.

Q. 11. For how many years have you been lecturing to the post graduate men that take your course there in organic chemistry?

A. I began in 1892.

Q. 12. And you have been steadily at that since?

A. I think there never was a year when I did not give graduate lectures in organic chemistry.

Q. 13. Are you a member of any organizations, chemical organizations?

A. I am a member of the American Chemical Society and was president in 1917, the first war year, and a member of Honorary Scientific Societies by election; the National Academy of Sciences, American

Academy of Arts and Science, and the American Philosophical Society.

Q. 14. There is a book here marked for identification called "Slosson's Creative Chemistry." I notice that the introduction to that book is written by Julius Stieglitz. Are you the gentleman who is responsible for that?

A. I am.

Q. 15. There is also in evidence an article by Julius Stieglitz in the Yale Review on the chemical organization. Was that written by you?

A. That was written by me.

Q. 16. Professor, during our late war did you have any official positions under the Government; and, if so, please state them?

A. I had a semi-official position as chairman of the Committee on Synthetic Drugs of the National Research Council, which was the scientific adviser of the Government; I had a semi-official position as adviser on the granting of licenses for synthetic drugs and alien patents to the Federal Trade Commission; and then I had an official appointment as expert adviser to the U. S. Public Health Service in the matter of arsenicals.

THE COURT: Of what?

THE WITNESS: Arsenicals—salvarsan and similar drugs.

Q. 17. Did you also have any connection with the Chemical Warfare Service?

A. Since 1920 I had an appointment from General Fries as consultant for the Chemical Warfare Service, dated December, 1920.

Q. 18. The Committee on Synthetic Drugs of the National Research Council, of which you say you were the chairman; in a very few words, Professor, will you indicate the work that that council did?

A. The duties of the chairman were primarily

these: First, to see that the American public received as quickly as possible supplies of all important synthetic drugs, which were cut off from us by the lack of importation from Europe. In the second place, the chairman had to look around to see which manufacturers could be induced or encouraged to take up the manufacture of these drugs. And in the third place, we tried to give them scientific advice how to utilize the patents, which often was a matter of greatest difficulty.

Q. 19. What patents do you refer to?

A. Patents on synthetic drugs, and the licenses of the Federal Trade Commission. And then further they came to me for help in the matter of securing material supplies. For instance, one house for the production of procaine had to have a large supply of bromine, and could not secure it commercially, and we did our best to help them out. We had appeals in regard to supplies of hydrosulphite, important for the manufacture of arsphenamine or salvarsan.

Q. 20. You speak, Professor, of synthetic drugs. Would you mind defining that term?

A. Synthetic drugs are medicaments which are prepared artificially and not found in nature.

Q. 21. In other words, you speak of those as synthetic drugs because they are put together from certain elements?

A. They are put together, yes.

Q. 22. And you differentiate those from drugs that are found in nature?

A. Yes.

Q. 23. As adviser to the Federal Trade Commission on the issuance of licenses for the manufacture of synthetic drugs, what were your duties?

A. The Federal Trade Commission took my advice as to what firms should receive licenses. For instance, in the matter of the manufacture of arsphena-

mine, or procaine, barbital and similar drugs; and they also sought my advice in regard to the refusal of licenses. We had one particular case that I have in mind where a Canadian firm asked to come in for the manufacture of arsphenamine, and my advice was that we had enough licenses, and to decline the request, and it was declined.

Q. 24. In order that the record may be clear, when you speak of arsphenamine, do you refer to the same drug which is otherwise known as salvarsan?

A. Exactly.

Q. 25. You say that you also held the position of special expert to the United States Public Health Service. First I would like to inquire whether the United States Public Health Service is what its name imports? Is it an official organization?

A. It is.

Q. 26. Under any particular department?

A. Under the Secretary of the Treasury.

Q. 27. Under the Treasury Department?

A. Under the Treasury Department.

Q. 28. As special expert to the United States Public Health Service, what service did you perform during the war?

A. Well, I was called in when the army reported a rather serious situation and asked the help of the Public Health Service in regard to the quality of some of the arsphenamines supplied to the army for use with soldiers. Just how serious the situation was, I would not like to state for the record, because——

Q. 29. I am not asking you to, Doctor?

A. (Continuing.)—But I will give it to counsel and your Honor, if you desire it. It is a matter that is in the official records.

Q. 30. I am not inquiring now as to that.

A. The Public Health Service felt that it did not have any chemist with sufficient expert knowledge of

organic chemistry to advise it in this field and wrote to me asking for suggestions and I gave the names of Dr. Noyes of the University of Illinois and myself; and they asked me to serve.

Q. 31. And for how long a period did you serve in that capacity with the United States Public Health Service?

A. I am still special expert to the United States Public Health Service.

Q. 32. In your connection as consultant for the Chemical Warfare Service since December, 1920, will you please indicate briefly what your duties have been there?

A. I paid one visit to the Edgewood Arsenal, went with other experts through their various plants, discussed their plans and needs, subjected myself to, I think it was a suffocating gas, to get familiar with it and have received frequent reports from the Edgewood Arsenal in regard to their activities, with requests for suggestions.

Q. 33. Will you state in a general way, without in any way revealing any information that you do not think ought to be revealed, just what sort of work it is that is being carried on by the Chemical Warfare Service? What are they trying to do?

A. I suppose they are trying to prepare to defend this country, defensively and offensively, in the next war. That is as far as I ought to answer.

Q. 34. But why is it spoken of as the Chemical Warfare Service? That is the point that I really have in mind.

A. It involves a study of organic chemical compounds, explosives, tear gases, poison gases, and a great variety of other chemicals pretty well known to the public.

Q. 35. So much for that. Now, Professor, you know that this suit is a suit brought by the United

States Government against The Chemical Foundation?

A. Yes.

Q. 36. Have you any financial interest in The Chemical Foundation, either directly or indirectly?

A. The Chemical Foundation owes me an amount on the debt incurred in preparing with a number of gentlemen, this book which is a report on the future progress of American medicine with the aid of chemistry.

Q. 37. Other than that, have you any financial interest?

A. None whatsoever.

Q. 38. Professor, I do not know whether you have ever read the complaint here, but it is charged that certain chemical concerns in the country maintain a monopoly and entered into a conspiracy to bring about the transfer of these patents. I should like to inquire whether you have any financial interest in any chemical concerns?

A. I received about two months ago, from the executors of my father's estate, six shares of Allied Chemical preferred stock. That is the limit of my interest—not bought by myself, and I have never bought any.

MR. ANDERSON: We will admit that he is not influenced in the slightest by that fact.

MR. KRESEL: You will admit that?

MR. ANDERSON: Yes.

Q. 39. Now, Professor, I take it that you have been a close student of organic chemistry in its relation to the general public welfare. I wish you would state, if you will, in what respects the upbuilding of a strong organic chemical industry in the United States is important to the nation?

A. I believe that the importance rests on three fundamental considerations: One is the problem of

military national defense. The second is the question of public health, and the third is the problem of industrial safety and prosperity.

Q. 40. I should like first to take up with you the public health feature of the importance of an organic chemical industry. Can you illustrate, very briefly, how a basic chemical element for instance, may be the source of a peaceful use in time of peace, and at the same time be an essential for explosives in time of war.

Mr. Anderson: Just one minute, if your Honor please. Of course I understand that this is all subject to our general objection; and while I think this question is entirely too broad, and is purely argumentative, if that is subject to the rule that we are proceeding under, of objection and exception, I do not think I will interrupt the witness.

The Court: Your objection and exception goes to all questions in the record that you want them to go to at the time of the argument. Won't you repeat that question, because I am not just sure that I can connect it with the main issue, and I am not sure I have fully in mind how it connects with that issue, and I might want some help on it now. (Question repeated as recorded.)

That question seems to me to present a two-fold aspect, or rather a conflicting aspect. Perhaps it is my lack of information. Did you listen to it at that time, Mr. Kresel?

Mr. Kresel: I did, and perhaps I will reframe it.

The Court: Very well then. Before it is answered, I will ask you what I have in my mind if I may.

Mr. Kresel: Yes, sir.

Q. 41. I wish you would state, Professor, in what respect organic chemistry is important to the public

health? I will put it in that way, illustrating if you will.

THE COURT: My difficulty here, Mr. Kresel, is that if the President or the Alien Property Custodian—and I am a bit confused at this stage of the case by some testimony that has recently gone in, just what the contentions of the respective parties are with respect to the powers of the Alien Property Custodian and with respect to the President, but assuming that either of them had the power to take into consideration in the private sale of patents the public health, whether that would not be a question for the Alien Property Custodian or the President, whoever it may be to determine? I do not see the conclusion of that thought, because what I am trying to ascertain at the moment is whether or not I can officially determine if such an element might be considered, unless I am officially told something about it. That is the dilemma I am in at the moment; so you may proceed under all the objections which the plaintiff may eventually show.

MR. KRESEL: Will you proceed, Professor, please?

A. I understand that the object of your inquiry is to bring out why the public health is of great moment to the national policy as national defense. That I believe is the question.

THE COURT: I do not think that is your question.

MR. KRESEL: In its relation to the public defense your Honor.

MR. ANDERSON: May I ask that the last question be read? I think the Doctor is confused in proceeding with the last question. (Question repeated as recorded.)

A. (Continued.) Now I understand; I thank you,

Colonel. Our bodies are chemical laboratories in which a great number of fundamentally important chemical reactions are going on continuously. From the moment of our conception until death, we have chemical changes primarily of an organic character.

Now, when these chemical reactions take place normally, we are well. When there is any abnormality, then we are sick. This abnormality can be of two fundamentally different types. Either our own organs do not work correctly, either in respiration or in the absorption of food or in the elimination; one of the chemical processes can go wrong. Then we are sick. Or there is another fundamental type. We can suffer from the invasion of germs, as Pasteur showed us, and these germs bring about a fundamental change in the chemical reactions of the body.

Now organic chemistry comes in to correct both evils. I doubt whether I have the time to answer the whole question: I think it would be sufficient for the purpose of this inquiry to illustrate the second, as it stands closer to the problems at issue; and there we have the well-known fact that germ diseases can be in certain important cases controlled by organic chemicals.

The first important illustration is that malaria can be cured by the means of the nitro-drug quinine, an organic chemical. This suggested, of course, that we look for other medicaments, artificial, for the cure of other germ diseases, and the first great triumph of that was the discovery of salvarsan, or 606, or arsphenamine, as they call it, by Ehrlich and his collaborators in the cure of syphillis.

The reason I bring this illustration is that in discovering this remedy the very name "606" shows that he worked through over 600 different products, all organic, until he got a satisfactory one, and he car-

ried out this enormous amount of organic research work with the aid of the dye factories in Germany. In fact, is a matter of record, that when the product was ready for clinical use, it was manufactured by a dye factory, the Farbwerke-Hoechst, of Germany. The reason for this is that both in its composition, excepting that it has arsenic in place of the non-harmful element nitrogen, and in the method of preparation, it is very closely related to dyes and other organic products.

If you have time, I would like to give you a still more recent instance, because it is pertinent. The success of 606, of course, stimulated an enormous amount of research work, especially by pupils of Ehrlich, and the most recent discovery, showing what this means for the public health, is this: We have pus diseases due to invasions of streptococcus and staphylococcus, and when the pus gets into our insides, it is terrifically dangerous.

One of the most dangerous forms is what we call the late cases of appendicitis, that is, cases that are operated on too late, in which the appendix is ruptured, and we get a peritonitis, a general infection of the peritoneum. Now they have found a dye of the acridine series, known as rivanol, which inhibits the growth of staphylococcus and streptococcus without any injury whatsoever to the tissues of the body. That is, of course, the safeguarding feature we must keep in mind.

To summarize the meaning of this discovery, let me give the results of a German surgeon, Katzenstein, in 1920, I believe it was. He had five late cases of peritonitis. All died. In 1921 he had rivanol at his command. He had nine late cases. After operation and surgical cleaning-up, he injected a solution of rivanol, and all nine cases survived, although one was

at the point of dying when he came in. From a hundred per cent. fatality to a hundred per cent. saving of life through a dye.

Q. 43. Professor, leaving out the question of public health, will you state in what respect organic chemistry is related to warfare?

A. Our explosives are primarily organic. All the modern explosives are. The old gunpowder contained an inorganic element, saltpeter and sulphur, which are inorganic; but all modern explosives are purely organic. All tear gases, all poison gases, are organic in character, and the process of changing a fundamental organic substance, like aniline or carbolic acid, into an explosive or a tear gas or a poison gas, is fundamentally a choice of the organic chemist.

I could, if the Court so desired, take a little aniline, and in the course of ten minutes show how it is converted into a stink gas or into a medicament or into a dye; not, of course, the best of stink gases, nor the best of medicament, nor the best of dyes, but to illustrate that one and the same fundamental material at the option of the organic chemist can be turned to the uses of warfare or of public health or of the industry.

THE COURT: If you are going to ask him to make a demonstration, let us defer that until after the noon recess.

MR. KRESEL: No, I was not going to ask him to make any illustration.

THE WITNESS: I am not prepared, your Honor, to make it.

Q. 44. I am going to ask you, professor, to state, if you will, the relation of the dye industry to organic chemistry and public health, explosives, commerce?

A. The relation, I think, is very transparent. It is evident that in times of peace the large scale use of

organic materials for warfare purposes must be held in abeyance. For medical purposes we require comparatively very small quantities of materials. The bulk use is in the manufacture of dyes and related organic chemicals, and with this bulk manufacture goes the vitally important consideration that the public appliances would be prepared in times of peace for industrial purposes.

Q. 45. And in times of war?

A. In times of war it would be at the option of the public administration to have these appliances, these men, these materials, turned to whatsoever purpose seemed most important for the welfare of the Government, either war or public health or industry, and the late war brought that out so precisely that we can give it practically as a mathematical demonstration.

Q. 46. Is there any connection between the machinery and equipment of a dye factory and the machinery and equipment of a factory to turn out explosives and munitions of war?

A. I understand that the same appliances can be used with at least very rapid changes for either purpose.

By MR. ANDERSON:

Q. 47. That is not within your knowledge; you never had any experience with that, did you, Doctor?

A. I have never gone through an explosives laboratory excepting the experimental plant at Edgewood.

MR. KRESEL: I will prove that by another witness, Colonel.

MR. ANDERSON: I am glad to get any information from you, and I know you would not say what you did not believe to be true.

MR. KRESEL: It is understood that that is not from his personal knowledge.

By Mr. Kresel:

Q. 48. Professor, I do not believe I asked you when you became the Chairman of the Committee on Synthetic Drugs of the National Research Council. What year was it?

A. I think that was in 1917, the first year of the war.

Q. 49. And while I am back on the question of qualifications, I want to ask you whether you have any official connection with the Institute of Medicine?

A. I was president of the Institute of Medicine of Chicago about 1919 or 1920. I have not looked up the date.

Q. 50. And with the pharmacy?

A. I have been a member of the Council on Pharmacy and Chemistry of the American Medical Association for close to twenty years.

Q. 51. In your position as Chairman of the Committee on Synthetic Drugs, did you acquire knowledge as to the supply of synthetic drugs just prior to our entrance into the war in 1917?

A. I acquired knowledge primarily as to shortages. Needs were brought to my attention. I was not interested in what had occurred previously.

Q. 52. Will you please state what the situation was with reference to such a shortage of synthetic drugs?

A. The shortage was very acute in regard to a number of vitally important drugs. One of the lessons of the war was that we had on the market here in this country far more drugs than we actually needed. Many were introduced merely to sell them. But we did find that there were a number which were acutely needed, and there was a shortage of those.

One of the most prominent was salvarsan or arsphenamine. Another was procaine introduced as

novocain, which is used in surgery for what we call local anæsthesia, on account of the lack of which physicians spoke of "Bulgarian" operations in the hospitals; that is, without an anæsthetic; and it was important to have a supply prepared for the evident needs, on a large scale of our army.

Another important drug needed was veronal or barbital, a hypnotic, producing sleep, which had to be prepared under Federal Trade Commission license in order to meet the needs in this country.

Still another drug, which we really never got until a year and a half or two years after the war, was the drug luminal, a specific to prevent seizures of epilepsy. I had the most pathetic letters from physicians and leading specialists, from hospitals, from patients, from parents, begging for luminal. We could not get it.

Q. 53. Professor, before the outbreak of the war, where did our country get its supplies of these drugs that you have mentioned?

A. By importation from Germany. I doubt whether any was made in this country. Possibly some barbital or veronal by the Bayer people in Albany.

Q. 54. I am going to ask you, professor, to state the nature and the extent of the disease syphillis?

A. Syphillis is due to an infection by a protozoan, I believe they call it, of the spirochetes tribe. We found in the war that the spread of syphillis was appalling. Perhaps ten million people in the United States in some form or other had syphillitic trouble.

Q. 55. Is it infectious?

A. It is infectious through contact.

Q. 56. When the need of arsphenamine or salvarsan was made so evident, did you undertake any research, and if so, where and when, to discover the process of making salvarsan or arsphenamine?

A. Let me give you the exact facts, Mr. Kresel.

Q. 57. Please.

A. The need became evident in 1917, and as adviser to the Federal Trade Commission, I advised them to grant licenses to a number of applicants.

Q. 58. Pardon me. In order to make it entirely clear, licenses on what?

A. Licenses for the manufacture of arsphenamine or salvarsan under the patents of Ehrlich and his collaborators.

Q. 59. The German patents?

A. The German patents; and the advice to the Federal Trade Commision was to grant licenses to the Dermatological Research Laboratories in Philadelphia; to the Metz Laboratories in Brooklyn, and to the Diarsonol Company of Canada, with the restriction that they were as quickly as possible to establish a plant in Buffalo, which they did. Later, licenses were issued, on our recommendation to the Public Health Service, to the State of Massachusetts and to the State of New York. Under those licenses arsphenamine was manufactured from 1917 on, particularly by the Dermatological Research Laboratory in Philadelphia, which had worked up the process, and were able to turn out a pure product; but the situation changed in May, 1918, when the War Department complained, as I stated before, of very serious trouble in using the remedy particularly of one licensee in the Army, and calling in the U. S. Public Health Service, and I in turn was called in to help them; and at a conference here in Washington, we outlined what seemed to us the best plan of procedure to meet the natural situation. That was about June 7 or June 8, 1918.

Mr. Kresel: Now, please stop there, and I will come back to that point. Does your Honor desire to suspend?

The Court: We will take a recess.

After Recess.

Q. 60. Professor, when recess was taken I was asking you whether, when the shortage of these essential drugs that you mentioned became evident, you undertook experimentation for the production of such drugs or any of them in this country?

A. I did, Mr. Counsel. My first work was on the production of luminol, and then later, after becoming connected with the Public Health Service, and the production of salvarsan or arsphenamine, we also did work on a drug called salophen.

Q. 61. When did this research commence, and how long did it continue?

A. On luminol, as far as I remember, it started in 1917, and we published our results in 1918—I have the publication with me if the date is important—giving the results of our work free to anyone who would undertake to make it. On salvarsan or arsphenamine we began work in June, 1918, after the question had become one of paramount importance to the War Department.

Q. 62. And how long did that continue?

A. I should think we were active there at least two years, though we did work along similar lines until the end of June this year.

Q. 63. And where was this research work being done?

A. At the University of Chicago, in my laboratory.

Q. 64. Professor Stieglitz, have you before you a copy of the German Patent No. 986,148, which we call here the salvarsan patent?

A. I have.

Q. 65. Are you familiar with the specifications in that patent describing the method to be pursued in order to produce the product called salvarsan or arsphenamine?

A. I am.

Q. 66. As adviser to the Federal Trade Commission and as expert on arsphenamine to the United States Public Health Service, did you have occasion to visit any of the plants of any of the manufacturers here in the Untied States who were producing or attempting to produce arsphenamine?

A. I visited all of them and more than once.

Q. 67. Will you please mention the names of those that you visited, the places where, and, if you can, the times when?

A. I visited the Dermatological Research Laboratories in Philadelphia at least three or four times. The exact dates I could not give now; but the time was in the summer of 1918, and again in 1919. I made official inspections for the United States Public Health Service. If it were important, I could get the exact dates.

I repeatedly visited the Metz Laboratories, located in Brooklyn, and visited the laboratory of the Diarsonol Company, in Buffalo, at least twice, and the laboratory of the Takamine Company, in Buffalo, that started later in the little town in Jersey, I think it is called Chrystal, but I would not be sure of that, at least twice; the laboratory of the Public Health Service or the equivalent, of the State of Massachusetts, in Boston, and the laboratory of the State Board of Health in Albany. Then, later, I visited the laboratory of Squibb & Sons, in New Brunswick, New Jersey. They had started work and planned to take a license, and I visited the laboratory finally of Mallinckrott, in St. Louis, Missouri.

Q. 68. In the course of these visits did you observe the method pursued by these various manufacturers in producing or attempting to produce salvarsan?

A. I did.

Q. 69. Do you feel, professor, that having obtained the information as representative of the Public Health Service, or of the Federal Trade Commission, that you would be justified or consider it proper to divulge here the exact methods pursued by each of those manufacturers?

A. I would not feel justified. I have kept my information confidential, excepting for the Public Health Service. In relation to one manufacturer as against another, I have always felt free to speak about the results of our own research at the University of Chicago.

Q. 70. And as to that, of course, you feel free to discuss it now?

A. Yes.

Q. 71. Then, under the circumstances, professor, I am going to ask you this question: Without stating the exact procedure that you observed, that was followed by each of these manufacturers in producing or attempting to produce arsphenamine, will you state whether or no any of them produced or attempted to produce arsphenamine such as could be safely administered to a patient by following out the steps described in patent No. 986,148, which you have before you?

MR. ANDERSON: If your Honor please, I will ask permission to note an objection to this question on the ground that this gentleman has stated that the information which he derived on this subject, as to the methods employed by these manufacturers, was derived as a public official and as a representative of the Federal Trade Commission. Under the law I recognize that he cannot give the information—certainly, as a representative of the Federal Trade Commission—because

the statute is clear on that subject. Therefore, I do not think that any testimony should be given on that subject.

I recognize that Dr. Stieglitz has made experiments himself. He has stated he is willing to say what he did at his own laboratories. Outside of our general objections I do not know that I have any objection to that testimony. But in this particular matter I suggest and submit for your Honor's consideration that it is not proper to ask him anything with respect to the methods employed by these laboratories which he inspected as a public official and as to which he cannot speak, both because it would not be appropriate for him to say anything on that subject, I think, and certainly it would not if he cannot state the facts, in which case we cannot go into the details of the information which he derived.

MR. KRESEL: Your Honor, perhaps before I answer that, would you desire to hear the question again, as I tried to anticipate that objection?

THE COURT: I recall the question. My immediate impression is this, Mr. Kresel, that whether or no the several plants or laboratories that he has mentioned were making it according to the patent is at the moment, it seems to me, immaterial. I am basing that on the assumption that you are going to ask him what he did at his own laboratory, and I am basing it on the assumption—I am not suggesting any question to you, understand, but I am only indicating what occurs to me at the moment—as to whether, from the experiments at his laboratory, it can be made. If he says it cannot, that would be affirmative evidence. I think the objection is well taken for the rea-

sons stated by Colonel Anderson and for one or two others which occur to me. If you want to present the same question after you have gone through his own efforts at his own laboratory, you may renew it.

MR. KRESEL: Very well.

Q. 72. Professor Stieglitz, from your research and experimentation such as you have described, conducted beginning in 1918 for a period of about two years, I think you said, can you state whether it is possible to make salvarsan such as can be safely administered to a patient by following out the steps described in Patent No. 986,148, which you have before you?

A. I should answer no; not without additional information, which is not revealed in the patent.

Q. 73. I now repeat the question that I asked a little while ago, and it is this: Without asking you to disclose the exact method of production followed by any of the manufacturers whose plants you visited, will you state whether or no any of them manufactured or attempted to manufacture salvarsan following the specifications in the patent that you have before you?

MR. ANDERSON: If your Honor please, I wish to renew my objection for the reasons stated and venture to suggest that the inhibition upon Dr. Stieglitz in the circumstances stated, in his official relationship, against saying what was not done, is just as great as against saying what was done.

THE COURT: I will hear you, Mr. Kresel.

MR. KRESEL: No, your Honor. If your Honor is entirely convinced, I do not want to take the time.

THE COURT: I am convinced, for two reasons: First, that his answer embraces by necessary

implication an inevitable conclusion; the second is that the objection as stated by Colonel Anderson, I think, is well taken.

MR. KRESEL: Very well.

Q. 74. Professor Stieglitz, are there auy other drugs on the market used for the same purpose that salvarsan or arsphenamine is used?

A. There is a drug called sulpharsphenamine on the market and neoarsphenamine. They also use another drug which we call cacotylates, and they are beginning to use Bismuth preparations which have been tried out in France, and are being put on the market in this country.

There is another preparation still in the experimental stage, but proving very successful, known as trypsarsamid, discovered by chemists of the Rockefeller Institute, and there is a preparation with a long chemical name, para-oxymeta-aminophenylarsenic acid. Three of these are said to be superior to arsphenamine and on account of their better penetrating power. But they are still at that point, in a stage of investigation. But they promise extraordinarily well.

MR. ANDERSON: Would your Honor permit me to note in addition to the general objections, the further objection to this testimony, and to note a motion to strike out the answer on the ground that what may be now in process of development—

THE COURT: As not having been anticipated.

MR. ANDERSON: No, sir. We cannot anticipate all the conditions that may arise in any art, and I do not see how that is relevant.

THE COURT: But in estimating the value of a patent that is unworked in America, would not a purchaser be entitled to anticipate improvements

and developments in the art, and would he not be entitled to discount the immediate value accordingly?

MR. ANDERSON: That would be the general condition surrounding all patents, and that would be one of the matters that would be like a purchase of anything else; it might become obsolete, or it might not, say a railroad, or anything else. You have to take into consideration always the nature of the art.

THE COURT: It seems to me the nature of the art and the development of the art, and the probabilities of the further development of the art, and the extent to which the value is discounted, if any, may be justified by the subsequent developments of the art. I overrule the objection and you may take the answer.

Q. 75. Dr. Stieglitz, I show you this paper, and ask you to state whether that is an official announcement from the United States Public Health Service, dealing with some of these new preparations which you have just described?

A. It is. It is marked, may I add, for the knowledge of counsel, for release upon receipt, so it is not a confidential document.

MR. KRESEL: It is short, your Honor, and with your Honor's permission I shall read it into the record. It is headed:

"HEALTH—Issued by the

UNITED STATES PUBLIC HEALTH SERVICE.

(For release upon receipt)

PENETRATIVE POWERS OF ARSENICALS

The probable reason why the chances for the complete cure of a generalized syphillitic in-

fection are poor, says the U. S. Public Health Service, is because the usual remedies (arsphenamine, neoarsphenamine, and silver arsphenamine) all lack the power necessary to enable them to penetrate the infected tissues in sufficient amounts to destroy the last remaining parasites. Other arsenicals, sulpharsphenamine, trypsarsamid, and 3-amino-4-oxyphenol arsenic acid, have superior penetrative powers and their use as remedies is suggested.

"The report was made by Carl Voegtlin, M. I. Smith, Helen Dyer, and I. W. Thompson, all of the U. S. Public Health Service, after prolonged experimentation, both chemical and bacteriological, on rabbits. While the authors admit that results so obtained cannot be transferred, without reservation, to the treatment of human syphilis, they nevertheless advance several reasons that cause them to believe that a clinical trial of the more penetrative preparations named is strongly indicated.

"In conclusion they express, as Ehrlich did, their belief that no matter what arsenical may be used better results will be obtained from single large doses a week apart than from smaller doses given at shorter intervals."

MR. ANDERSON: Have you any date of that, Mr. Kresel?

MR. KRESEL: I have not, but I will ask Professor Stieglitz.

Q. 76. Professor, when was this sent out?

A. I received that about two weeks ago; maybe ten days ago.

MR. ANDERSON: Without at this time wishing to argue, in addition to my general objections, I would like to note an objection to that evidence as purely hearsay. It is, as I understand, a newspaper publication.

THE WITNESS: It is not. It is an official re-

port from the United States Public Health Service.

MR. KRESEL: I thought the witness had made it perfectly plain.

THE WITNESS: I beg your pardon, Colonel Anderson. I should have made it clear. May I add for the information of counsel——

MR. ANDERSON: This is headed "Health News, issued by United States Public Health Service, for release upon receipt." Is that one of these news publications sent out for publication in the public press?

THE WITNESS: It came to me in an official envelope of the United States Public Health Service. That is all the information I have.

MR. ANDERSON: I will reserve the point, sir, for further discussion.

THE WITNESS: May I add a further statement, your Honor, for the benefit of counsel? There is an article by Professor Lovenhart, of the University of Wisconsin, on trypsarsarlin, and clinical results obtained with it, in the Journal of the American Medical Association published within the last six months or two months; I have not the exact date.

Q. 77. Dealing with this subject?

A. Dealing with trypsarsamid; one of these remedies.

Q. 78. Professor Stieglitz, you know Herman A. Metz?

A. I do.

Q. 79. Mr. Metz, while a witness here, was questioned under cross-examination as to the making of an agreement between him and the Dermatological Research Laboratories, dated June 8, 1918, which agreement is now in evidence. He stated in substance that that agreement was made by him upon your in-

sistance. In order to have it entirely accurate, I will read to you his testimony upon the subject.

I read, Colonel Anderson, from page 1908 of the record:

"XQ. 867. By this agreement you asked Dr. Schamberg to improve your product?

"A. Dr. Stieglitz asked him and I signed it at his request. There you are; that is the statement.

"XQ. 868. Did you ask Dr. Schamberg to help you improve your product?

"A. Dr. Stieglitz asked him and I agreed to let him and signed that agreement."

And again at page 2063, Mr. Metz, questioned about that agreement, gave testimony as follows:

"RDQ. 1555. Then, according to your testimony, nothing was ever done under that agreement?

"A. Nothing, sir.

"RDQ. 1556. Why not, Mr. Metz?

"A. Didn't need their assistance; didn't demand it; didn't desire it, and didn't ever use it."

In the first place, do you know the agreement that is referred to?

A. I do.

Q. 80. Please state what you had to do with the making of that agreement and what conversation you had with Mr. Metz concerning his product, and with Dr. Schamberg, if you had any conversations with him in the presence of Mr. Metz with reference to the making of this agreement.

Mr. Anderson: If your Honor please, there are two objections I should like to note to the question. The first is that Dr. Stieglitz has testified that his dealing with this situation was in an

official capacity as a representative of the two branches of the Government of the United States, of which he did not wish to speak, and I think that this matter would come within that limitation or prohibition.

In the second place, without examination of the record, I cannot say now whether this objection is well taken, and I wish to reserve it. If my recollection serves me right, and it is very indefinite on this subject, in the matter referred to counsel took the witness entirely out of the direct examination and, therefore, would not be allowed to make him his own witness and then to contradict him. I reserve that point for examination of the record. If I find I am not correct, of course, that objection will go by. The first, I think, without further examination is sound, and if it were gone into it might cause me a good deal of embarrassment in my effort to cross-examine.

THE COURT: My belief is that the second objection is not well taken; that the testimony referred to by Mr. Kresel was elicited on cross-examination proper and not on any testimony given as a result of questions outside the scope of cross-examination. I think that the answer to the present question would not necessarily go within the limitation or prohibition imposed upon Dr. Stieglitz by the duties of his office.

THE WITNESS: Your Honor, this means that it was as a servant of the Public Health Service that I agreed to testify. This contract was drawn up as a servant of the U. S. Public Health Service.

THE COURT: I see no reason why you should be prohibited from so testifying, Dr. Stieglitz. You are not revealing any secrets, so far as I can see,

and I think you are at full liberty to give the facts in answer to this question. Let us have the question read, however, before you answer it.

(Q. 80. Repeated as above recorded.)

THE COURT: Conversation concerning Mr. Metz's product? The question is twofold. I did not realize that when ruling on the objection. Will you restate it and make the question a single one?

MR. KRESEL: I will withdraw the question.

Q. 81. Please state what you had to do with the making of this agreement and in that connection you may state what conversation you had with Mr. Metz about that agreement?

MR. ANDERSON: May I be permitted to note the same objection?

THE COURT: The same objection as to this testimony.

MR. ANDERSON: And may I ask the witness if he was not at that time representing the Federal Trade Commission in the capacity testified this morning?

THE WITNESS: No, this was primarily a Public Health Service issue.

MR. ANDERSON: You were at that time, however, representing——

THE WITNESS: I was adviser, yes, but the whole problem came up through the Public Health Service.

MR. KNIGHT: I understand that the same prohibition will be borne in mind by the witness with regard to the divulgation of any——

THE WITNESS: I will do my best.

THE COURT: I did not hear you, Mr. Knight.

MR. KNIGHT: I assume the witness will bear in mind the same prohibition about the divulging

of these matters that the general instruction of the Court relates to.

THE COURT: Oh, yes.

THE WITNESS: I will do my best.

THE COURT: Have you the statute before you?

MR. ANDERSON: The Federal Trade Commission Statute?

THE COURT: Yes.

MR. ANDERSON: I have not, sir. I had it the other day when Mrs. Wilson testified, and I will try to get it. I had it in my notes, your Honor, but I have so many notes I cannot recall it. I had a copy of the statute the other day.

THE COURT: It is not the Trading with the Enemy Act?

MR. ANDERSON: No, sir; it is the Federal Trade Commission Statute that prohibits the divulging of any information gotten—similar to the Tariff Commission Statute.

THE COURT: I do not want to require the witness to divulge anything within the meaning of the prohibition of that statute.

MR. KRESEL: I think your Honor can depend upon Professor Steiglitz to lean backwards, the other way, and not divulge anything that comes within that prohibition. I have been over this question with him and certainly under your Honor's warning and instruction he will not do it.

MR. ANDERSON: To the end that my position may be understood, might I merely suggest that since Professor Steiglitz then represented the Federal Trade Commission in these license matters and represented the Public Health Service, that therefore every man dealing with the Government was compelled to give him all his information, it would be impossible for him to separate the in-

formation that a man would give him in discussion, what he would say to him in one capacity from that in the other capacity.

It was in that view, and not in the slightest questioning the discretion of Dr. Stieglitz, in his large experience—because I know he would be careful to avoid it—that it seemed to me any of that information or conversation would be forbidden by the intent and the general interpretation of the law. It was not intended to question his discretion or purpose in any way.

THE COURT: I would like to have the question stated again.

(Q. 81 repeated as recorded above.)

THE COURT: Now, pardon me just a moment. The question is still twofold. I do not know the Federal Trade Commission Statute or prohibition to which reference has been made, I am not familiar with it and cannot get familiar with it at the moment apparently.

MR. KRESEL: Suppose, sir, I limit it simply to a statement by him of his connection with the making of this agreement ,and omit any conversations.

THE COURT: Yes.

Q. 82. Do you understand, Professor, the limitation?

A. I think I do. My clear recollection of the case is this: When the War Department called upon the Public Health Service for help in securing a safer product for treatment of soldiers of the army I was called to Washington by the Director of the Hygienic Laboratory, Dr. McCoy, in the Public Health Service, and I am quite sure my expenses to Washington were paid by the Public Health Service. We had a conference in the office of the Director, where Mr. Metz was present, and, as I recall it, Mr. Schamberg, myself and the Di-

rector, and maybe one or two other men of the Director's staff, where we threshed out the whole situation frankly——

Q. 83. You will not say what was said?

A. No. (Continuing.) Man to man.

THE COURT: May I make a suggestion? The United States is the plaintiff here. Does that statute put a prohibition upon the Attorney General?

MR. KRESEL: I think the Government can waive it if they want to.

THE COURT: No, I do not know that the Government could. But we have not the usual party-plaintiff in this case, Mr. Kresel. The United States has put in the testimony of Mr. Metz. My inquiry now is whether the prohibition of this statute prevents the disclosure of the full facts to the Attorney General of the United States—that is, not a public disclosure, but for the Attorney General's representatives. I am not going to indulge in any assumptions except this one. Colonel Anderson has very generously said that he wants all facts and only the facts to be revealed. I assume that statement still holds. Now, if the Federal Trade Commission Act does not prohibit the disclosures of Dr. Stieglitz to the Attorney General of the United States, I will make the suggestion, which you may follow or not, that you permit Dr. Stieglitz to disclose to the Attorney General of the United States, unless it is prohibited by the Act, by the Attorney General, I mean the Attorney General's representative, Colonel Anderson, and then let him take such steps, if any, as he may deem proper after such disclosure.

MR. KRESEL: I will gladly follow your Honor's suggestion, and if your Honor will grant us

a recess of five minutes I think that will be all that will be necessary. Dr. Stieglitz will, I am sure, frankly disclose to Colonel Anderson what this conference was about, and then I understand Colonel Anderson is not bound to do anything about it, but may then decide whether he wants to maintain that position.

MR. ANDERSON: Before the recess is taken I wish to say that the Court is quite right in assuming that the Government wishes all the facts having a bearing upon the decision in this case and which are pertinent to be brought out in this case; but of course I do not recall for the minute the terms of the statute, and I should be compelled to object to the disclosure of any information which would here be in any way a violation of the law.

THE COURT: I am not suggesting any violation of the law, Colonel Anderson.

MR. ANDERSON: I would be compelled to object to it and call attention to the fact. I merely call your Honor's attention to the law, and that is the reason I am objecting.

MR. KRESEL: Not at all. It is not suggested——

THE COURT: Just a moment, Mr. Kresel.

MR. ANDERSON: I may say that I had gone so far as to ask for certain information of the Tariff Commission, and one of the Commissioners came up to see me personally. He is himself a lawyer. He called my attention to the statute and cautioned me not to ask, either in or out of court, for any information that would be in violation of that statute. He asked me, if any representatives of the Commission were put on, to be very careful to bring to the Court's attention the provision of that Statute as construed by the Commission.

Therefore, I am charged with the duty of bringing these questions to your Honor's attention and make a note of the objection.

THE COURT: I have no objection to your bringing that to my attention. I think that is your duty as a temporary officer of this court. Have you objection to carrying out the suggestion? It is your full liberty to adopt it or reject it as you deem proper.

MR. ANDERSON: I have no objection whatever, sir, if I can find the statute. I will look for it, and if it seems to me that I am justified in asking Dr. Stieglitz to disclose the information to me, if I am not infringing in any way upon the duties of these departments of the Government, I will do whatever I can consistently do to get the facts brought out here, within those limitations.

THE COURT: I do not mean to have these facts brought out at all. But I assume this, that if you are at liberty under the statute to hear what Dr. Stieglitz said, and if that has any bearing upon the testimony of Mr. Metz, in your opinion, I assume you will act. If it does not, I assume you won't.

MR. ANDERSON: My knowledge of the facts at the present time is Mr. Metz's testimony. I know absolutely nothing outside of that.

THE COURT: I have not any objection to your saying that you do not want to be put in that position; if you do not want to be put in the position that my suggestion will put you in, you are at perfect liberty to say so.

MR. ANDERSON: I would not hesitate a moment, sir. I would like to get the statute and look at it and see what my rights and duties are, and as far as I can, I want to comply with those rights and duties to the full extent.

My associate brings to my attention Chapter 311, Revised Statutes, 38 Statutes at Large, page 724, which is the act creating the Federal Trade Commission, defining its powers. The closing clause of Section 10 of that act is as follows. I think there are other provisions dealing with it also:

"Any officer or employee of the Commission who shall make public any information obtained by the Commission without its authority, unless directed by a Court"—your Honor has power to direct him—"shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding $5000 or by imprisonment not exceeding one year, or by both fine and imprisonment, in the discretion of the Court."

I think under that section—if there is any other section, I do not recall at the moment—your Honor would have the power.

THE COURT: Dr. Stieglitz, I make the following order: That you forthwith, in the presence of Mr. Kresel, the attorney for the defendant in this suit, make to Colonel Anderson, a representative of the United States of America and counsel for it in this suit, a full and free disclosure of the facts pertaining to the Metz transaction about which inquiry has been made; that you do that privately in the presence only of Mr. Kresel and of Mr. Anderson, the counsel for the United States; and whether such disclosure shall not be made public by either of them or by you will be subsequently subject to the further order of this Court. You may use my chambers if you desire.

MR. ANDERSON: May I have the benefit of Mr. Knight also?

THE COURT: I did not get just Mr. Knight's official capacity.

MR. ANDERSON: Special Assistant to the Attorney General of the United States and head of the Patent Department of the Department of Justice, regularly employed.

THE COURT: You may include Mr. Knight as a third party. Do you want your patent expert, Mr. Kresel?

MR. KRESEL: Not at all, your Honor. It is not at all necessary.

THE COURT: You may use the corner room of my chambers for consultation, if you desire, or the corner room down here, which will probably be better.

(A short recess was then taken by direction of the Court.)

MR. KRESEL: Will your Honor permit the stenographer to read the last question? (Question repeated as recorded.)

Q. 84. Dr. Stieglitz, I ask you now to state what transpired at this conference at the Hygienic Laboratory in Washington, at which you say Dr. McCoy, you, Mr. Metz and Dr. Schamberg and perhaps two others were present?

MR. KRESEL: Now, I think, your Honor, that the witness is entitled at this point to an instruction from the Court, as to whether or no he may answer that question.

THE COURT: Under and pursuant to the provisions of the Federal Trade Commission Act empowering me so to do, I now order and direct you, Dr. Stieglitz, to answer the question now pro-

pounded to you, and make such disclosures as may be necessary or proper in making such answer.

A. At the conference at the Hygienic Laboratory in Washington, the serious trouble reported by the Army was discussed. It was made to appear that Mr. Metz was preparing arsphenamine on an industrial basis; that is, in large quantities, while the Dermatological Laboratory had been producing on an enlarged laboratory scale, and not on an industrial scale. I advised that the solution of the problem must be sought, so as to assure to the country as large and immediate a supply of pure arsphenamine as was possible, and that therefore the capacity of Mr. Metz's laboratory should be used, together with the experience and knowledge of the Dermatological Research Laboratories. I suggested also, in order to carry out this plan, the making of the tentative agreement of June 8, 1918, which is in the record, between Mr. Metz and the Dermatological Laboratories, which I signed as a witness; and I would like to explain here, that as far as my memory goes, that transaction occurred in Philadelphia, in Dr. Schamberg's office, but I could not be positive about that.

On or about the day following the making of the agreement, Dr. Schamberg objected and expressed his preference not to carry out the agreement, as it would mean giving away trade secrets, and for other reasons. So the agreement was never, in fact, carried out, but Mr. Metz secured the advice of competent scientific men, such as Dr. Meyers, and Dr. Lake, of the U. S. Public Health Service, as well as my own advice and assistance, and thus he solved his problem.

Q. 85. Dr. Stieglitz, I show you several letters and copies of letters and ask you to state whether you received the letters signed "H. A. Metz" and whether

you sent to Mr. Metz the originals of the carbon copies that are included in that batch?

THE WITNESS: Your Honor, these were sent to me in my official capacity.

THE COURT: Have you seen the letters, Colonel Anderson?

MR. ANDERSON: No, sir. I want to see them before I make any statement about them. It may be that we have no objection.

MR. KRESEL: I have not offered them at all. I just want the witness to identify them; then I shall show them to counsel.

A. I do identify them.

MR. KRESEL: If your Honor please——

THE COURT: Before you ask anything further, I want to make this general order. I make the order which I made a moment or two ago with respect to a particular question, a general order to apply to all questions asked by you or by counsel for the plaintiff. That will be applied to all questions unless modified at the time that the question is asked.

MR. ANDERSON: Your Honor will permit me to just note an objection to these questions, of course, yielding to your Honor's order without the slightest hesitation, because I am a little embarrassed to know just what my duty is in the premises, and therefore I merely want to reserve the question so that I may not be in any sense criticised by my superiors for not making an objection on the record.

I recognize your Honor's power under the statute to order it. I am not questioning not only your power but the wisdom or the propriety in any sense. I merely want to note an objection to the

end that the Government's position may be reserved for what it is worth.

THE COURT: I think that is proper, and that reminds me that it is probably wise that I should also state on the record my reasons for making the order; and that is that the witness has testified that he is an officer of the United States, and that in performing these duties he performed them in the service of the United States. The knowledge which was thus gained by him was open therefore to the United States. The United States is a party plaintiff in this suit. The United States has put on a witness, and so far as I can judge of the questions that you have asked, Mr. Kresel, and so far as I can anticipate the purpose of this examination, it is to impeach or to lessen the weight to be judicially given to the testimony of that witness heretofore produced by the United States.

It is solely because the United States is a party, under these particular and peculiar circumstances that I make the order that I now do. I would not consider the order in this case a precedent for a like order in a suit between private parties. It would be only a precedent in like cases in like circumstances.

MR. KRESEL: I offer in evidence a letter dated June 11, 1918, from Herman A. Metz to Dr. Julius Stieglitz.

THE COURT: And the purpose is what, Mr. Kresel?

MR. KRESEL: The purpose, your Honor, is to contradict and disprove testimony given by Mr. Metz. I think I might as well state it now so that your Honor will have it clearly in mind.

Your Honor will recall that one of the points that I sought to bring out from Mr. Metz was that

notwithstanding he had sent his brother abroad, who had spent there four months in the factory of the Farbewerke-Hoechst Company trying to find out how to make arsphenamine, it took Metz a year and a half thereafter before he could produce the product. He denied that.

I showed him the agreement of June 8, 1918, wherein he was buying the services of Dr. Schamberg so as to tell him (Metz) how to make arsphenamine. He denied that and said that he never wanted that agreement, that his product was all right and that he did not need any assistance. And by the way, the latter testimony was brought out upon the re-direct of Mr. Metz and not upon the cross.

This testimony, this correspondence that I am now offering, and which I shall read to your Honor, if you will permit me, goes expressly to show the contrary of what Mr. Metz testified.

THE COURT: Let the instruments or the writings be marked.

Received in evidence and marked "Defendant's Exhibit No. 168." (*See Exhibits, Vol. V, page 2997.*)

MR. ANDERSON: Without interrupting the examination, your Honor, will you allow me to reserve the objections on all this evidence, making an addition to the general objections we are proceeding under the specific objections I have already made applying to this evidence, and permit me just to reserve that, because I confess I am facing a new situation and one as to which I do not know what my superiors in the Department of Justice would expect me to do. I therefore want to reserve all rights, without in any way undertaking to go against your Honor's rulings or undertaking to limit the facts, whatever they may be.

MR. KRESEL: I will offer these first, your Honor, and then I will read them consecutively.

I offer in evidence a letter from Mr. Metz to Dr. Stieglitz of June 21, 1918, together with the enclosure. May the letter be marked Exhibit 169 and the enclosure 169-A.

Received in evidence and marked, respectively, "Defendant's Exhibits Nos. 169 and 169-A." (*See Exhibits, Vol. pages 2999, 3000.*)

MR. KRESEL: I offer in evidence letter from Mr. Metz to Dr. Stieglitz, dated June 24, 1918, which will be Exhibit 170.

Received in evidence and marked "Defendant's Exhibit No. 170." (*See Exhibits, Vol. V, page 3002.*)

MR. KRESEL: I offer in evidence letter from Mr. Metz to Dr. Stieglitz, dated August 20, 1918, which will be Exhibit 171.

Received in evidence and marked "Defendant's Exhibit No. 171." (*See Exhibits, Vol. V, page 3003.*)

MR. KRESEL: I offer in evidence copy of a letter from Dr. Stieglitz to Mr. Metz, dated August 22, 1918.

Received in evidence and marked "Defendant's Exhibit No. 172." (*See Exhibits, Vol. V, page 3004.*)

MR. KRESEL: I offer copy of a letter from Dr. Stieglitz to Mr. Metz, dated January 3, 1919, as Exhibit 173.

Received in evidence and marked "Defendant's Exhibit No. 173." (*See Exhibits, Vol. V, page 3005.*)

MR. KRESEL: And, last, I offer a letter from Mr. Metz to Dr. Stieglitz, dated January 7, 1919, which will be Exhibit 174.

Received in evidence and marked "Defendant's Exhibit No. 174." (*See Exhibits, Vol. V, page 3006.*)

THE COURT: May I ask, the brother of Mr. Metz went abroad in the spring of 1916, as I recall it?

MR. KRESEL: The spring of 1916.

THE COURT: January to May, as I recall.

MR. KRESEL: No, your Honor, January to April.

THE COURT: Was it January to April?

MR. KRESEL: Yes, sir. The letter of June 11, 1918, reads as follows (Reads letter.)

Q. 86. Was Dr. Raizies of the Dermatological Laboratory?

A. He is their chemist.

MR. KRESEL: The letter of June 21, 1918, reads as follows (Reads letter.)

Here is the report from his brother. It is dated June 20, 1918, and addressed to Mr. Herman A. Metz. (Reads same.)

THE COURT: His brother was abroad in 1916?

MR. KRESEL: In 1916, sir. This report was June 20, 1918.

Q. 87. Who was Dr. McCoy?

A. He is Director of the Hygienic Laboratory.

Q. 88. United States Public Health Service?

A. Of the United States Public Health Service.

MR. KRESEL: On June 24th Mr. Metz writes to Professor Stieglitz as follows. (Reads letter.)

On the 20th of August, 1918, he writes to Dr. Stieglitz. (Reads letter.)

On January 3, 1919, Dr. Stieglitz writes to Mr. Metz as follows. (Reads letter.)

Q. 89. Takamine was one of the manufacturers of salvarsan?

A. It was.

MR. KRESEL: The answer to this last letter, from Mr. Metz, is as follows. (Reads letter.)

THE COURT: I am asking that those exhibits be kept in the safe by the clerk to avoid any danger of their being lost. There is no reflection on anyone, but I want them kept so there is no possibility of their being disturbed.

Q. 90. Professor Stieglitz, I am now going to repeat to you the question upon which the Court ruled some while ago. It is this: Without disclosing the exact steps or processes pursued by the manufacturers of arsphenamine whose plants you say you visited, I ask you to state whether your observation of their processes showed that any of them produced arsphenamine such as could be safely administered to a patient by following the steps described in Patent No. 986,148.

THE COURT: Do you want to make the same objection?

MR. ANDERSON: Would your Honor permit me to note my objection, first, on the ground that it calls for a conclusion of the witness, and is therefore, I submit, not competent testimony; and in the second place, on the grounds which I stated at some length when this question was asked and to which I ask leave to refer without repeating them at this time, and that they be considered as made to this question.

THE COURT: The question as to whether it is a conclusion gives me some little concern. I have some doubts as to whether that objection may not be well taken; but let the answer be taken under our General Rule.

THE WITNESS: I should answer?

THE COURT: The general order is that you answer all the questions, unless you are told not to answer a specific question.

MR. ANDERSON: And of course, an exception is noted in each case.

THE COURT: Yes, an exception noted in each case.

A. I would answer: Not without additional information not disclosed in the patent.

THE COURT: I want to add something to the general direction I gave to the clerk a moment ago. Those exhibits which were just put in may be as freely used by counsel for the parties as any other exhibit; but when they are in his custody, instead of being left open, they are to be kept in the safe. They are, however, freely open to counsel for the parties, and may be retained in their possession as long as counsel desire.

MR. ANDERSON: They will be printed in the record, as I understand it.

THE COURT: Yes. What I meant was, that special care should be used by the clerk with respect to those, but not so far as counsel is concerned.

Q. 91. I show you, Professor, letter dated March 14, 1919, signed Julius Stieglitz, professor of chemistry, and a memorandum accompanying the same, the letter being marked Defendant's Exhibit No. 47 and the memorandum 47-A; and I ask you to please state whether those are photostatic copies of the letter and memorandum that you sent to Mr. Palmer as Alien Property Custodian?

MR. ANDERSON: Our objection went to the fact, aside from the immateriality and irrelevancy,

that at the time those letters were written Mr. Palmer was not Alien Property Custodian, because Mr. Garvan qualified on the fourth day of March. The authenticity of the papers is admitted under the stipulation.

MR. KRESEL: That is all right; I will withdraw the question.

A. This is addressed to the Attorney General, A. Mitchell Palmer, March 14th.

Q. 92. Did you on the 4th of March, 1919, have a conference with Mr. Palmer?

A. I did.

Q. 93. And was it subsequent to that conference and in connection therewith that you wrote that letter?

A. It was.

MR. KRESEL: That is all, Doctor.

MR. ANDERSON: I would like to have the same objection apply to this testimony as to the testimony of Mr. Palmer on that question.

THE COURT: I assume that any objection you have heretofore stated to any testimony may be used by you in argument showing the invalidity or impropriety of the testimony.

MR. ANDERSON: The time of adjournment is passed, and I suppose your Honor would rather we take up the cross-examination in the morning.

THE COURT: You have closed with Dr. Stieglitz, Mr. Kresel?

MR. KRESEL: I have closed. I had hoped that the Colonel would be able to finish with the witness because he is anxious to get back to Chicago.

MR. ANDERSON: We have gone twenty minutes beyond the adjournment hour, and while I

would like to accommodate the witness, I am really very tired.

I do not think it will take long in the morning, Doctor.

THE COURT: We will adjourn until 8.30 o'clock tomorrow, Standard time.

(Whereupon, at 3.20 o'clock, Standard Time, an adjournment was taken until Friday, July 13, 1923, at 8.30 o'clock, Standard Time.)

End